

**CITY OF NEWPORT BEACH  
PLANNING COMMISSION AGENDA  
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE**

**THURSDAY, NOVEMBER 21, 2013  
REGULAR MEETING – 6:30 p.m.**

**BRADLEY HILLGREN  
Chair**

**LARRY TUCKER  
Vice Chair**

**KORY KRAMER  
Secretary**

**FRED AMERI**

**TIM BROWN**

**RAYMOND LAWLER**

**JAY MYERS**

**Planning Commissioners** are citizens of Newport Beach who volunteer to serve on the Planning Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:

**KIMBERLY BRANDT, Community Development Director**

**BRENDA WISNESKI, Deputy Community  
Development Director**

**LEONIE MULVIHILL, Assistant City Attorney**

**TONY BRINE, City Traffic Engineer**

**MARLENE BURNS, Administrative Assistant**

**NOTICE TO THE PUBLIC**

Regular meetings of the Planning Commission are held on the Thursdays preceding second and fourth Tuesdays of each month at 6:30 p.m. The agendas, minutes, and staff reports are available on the City's web site at: <http://www.newportbeachca.gov> and for public inspection in the Community Development Department, Planning Division located at 100 Civic Center Drive, during normal business hours. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Community Development Department, Planning Division staff at (949) 644-3200.

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally three (3) minutes per person. All testimony given before the Planning Commission is recorded.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant of this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or [lbrown@newportbeachca.gov](mailto:lbrown@newportbeachca.gov)).

**APPEAL PERIOD:** Use Permit, Variance, Site Plan Review, and Modification Permit applications do not become effective until 14 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. Tentative Tract Map, Tentative Parcel Map, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. General Plan and Zoning Amendments are automatically forwarded to the City Council for final action.

**NEWPORT BEACH PLANNING COMMISSION AGENDA  
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE  
THURSDAY, NOVEMBER 21, 2013  
REGULAR MEETING – 6:30 p.m.**

**I. CALL TO ORDER**

**II. PLEDGE OF ALLEGIANCE**

**III. ROLL CALL**

**IV. PUBLIC COMMENTS**

*Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.*

**V. REQUEST FOR CONTINUANCES**

**VI. CONSENT ITEMS**

**ITEM NO. 1      MINUTES OF NOVEMBER 7, 2013**

**Recommended Action:** Approve and file

**VII. PUBLIC HEARING ITEMS**

*Speakers must limit comments to three (3) minutes on all items. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.*

*If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues, which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.*

**ITEM NO. 2      DAVIS LOT MERGER AND SETBACK DETERMINATION (PA2013-176)**

**Site Location:** 6th Street and 524 West Ocean Front

**Summary:**

A lot merger application and a request to waive the parcel map requirement for two properties, under common ownership, located on Balboa Peninsula. The merger would combine the two parcels into one lot for a single-unit residential development. The applicant also requests an Alternative Setback Determination, which is intended in cases where the orientation of an existing lot and the application of the standard setbacks are not consistent with other lots in the vicinity.

**CEQA Compliance:**

The project is categorically exempt under Section 15305, of the California Environmental Quality Act (CEQA) Guidelines - Class 5 (Minor Alterations in Land Use Limitations), which exempts minor alterations in land use limitations in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density.

**Recommended Action:**

1. Conduct public hearing; and
2. Adopt Resolution No. \_\_\_\_ approving Lot Merger No. LM2013-003 and Staff Approval No. SA2013-011.

**ITEM NO. 3      MIRAMAR DRIVE CODE AMENDMENT (PA2013-211)**

**Site Location:** 2022, 2026, 2032, 2034, 2038, and 2042 Miramar Drive

**Summary:**

A Zoning Code Amendment to change the rear alley setback for six properties from 6 feet to 0 feet, consistent with the standard rear alley setback for other properties in the City when located adjacent to a minimum 20-foot-wide alley.

**CEQA Compliance:**

This item is categorically exempt under Section 15305, of the California Environmental Quality Act (CEQA) Guidelines – Class 5 (Minor Alterations in Land Use Limitations). The Class 5 exemption allows minor alterations in land use limitations in areas with an average slope of less than 20 percent and which do not result in any changes in land use or density. In this case, the six lots affected by the amendment have an average slope of less than 20 percent; the amendment will not change the land use category or zoning district of the affected lots; and the maximum number of dwelling units per lot will not change.

**Recommended Action:**

1. Conduct public hearing; and
2. Adopt Resolution No. \_\_\_\_ approving Code Amendment No. CA2013-006.

**ITEM NO. 4      WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE UPDATE (PA2012-057)**

**Site Location:** Citywide

**Summary:**

An amendment to the Newport Beach Municipal Code (“NBMC”) to update regulations regarding wireless telecommunication facilities (“Telecom Facilities”). Regulations currently contained in Chapter 15.70 would be updated and relocated to Title 20 (Planning and Zoning) and Chapter 15.70 would be rescinded in its entirety.

**CEQA Compliance:**

This action is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15061(b)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. The revisions to the Zoning Ordinance do not authorize any development, and therefore, will not result in a change to the physical environment. Individual wireless telecommunications facilities are subject to CEQA review at the time of application review.

**Recommended Action:**

1. Conduct public hearing; and
2. Adopt Resolution No. \_\_\_\_ recommending City Council approval of the proposed update of the Wireless Telecommunication Ordinance (CA2012-004).

**VIII.      STAFF AND COMMISSIONER ITEMS**

**ITEM NO. 5      MOTION FOR RECONSIDERATION**

**ITEM NO. 6      COMMUNITY DEVELOPMENT DIRECTOR’S REPORT**

**Committee Updates:**

1. Land Use Element Amendment Advisory Committee
2. General Plan/Local Coastal Program Implementation Committee

ITEM NO. 7 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS  
WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR  
REPORT

ITEM NO. 8 REQUESTS FOR EXCUSED ABSENCES

IX. ADJOURNMENT

**CITY OF NEWPORT BEACH PLANNING COMMISSION MINUTES**  
**Council Chambers – 100 Civic Center Drive**  
**Thursday, November 7, 2013**  
**REGULAR MEETING**  
**6:30 p.m.**

**I. CALL TO ORDER** - The meeting was called to order at 6:30 p.m.

**II. PLEDGE OF ALLEGIANCE** – Secretary Kramer

**III. ROLL CALL**

PRESENT: Ameri (arrived at 6:35 p.m.), Hillgren, Kramer, Lawler, and Tucker

ABSENT

EXCUSED: Brown and Myers

Staff Present: Kimberly Brandt, Community Development Director; Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; Tony Brine, City Traffic Engineer; Patrick Alford, Planning Manager; Jim Campbell, Principal Planner; Jaime Murillo, Associate Planner; and Marlene Burns, Administrative Assistant

**IV. PUBLIC COMMENTS**

Chair Hillgren invited those interested in addressing the Planning Commission to do so at this time. There was no response and Chair Hillgren closed public comments.

**V. REQUEST FOR CONTINUANCES** - None

**VI. CONSENT ITEMS**

**ITEM NO. 1 MINUTES OF OCTOBER 17, 2013**

**Recommended Action:** Approve and file

Chair Hillgren opened public comments. Seeing none, Chair Hillgren closed public comments.

Chair Hillgren noted that comments were received with corrections to the subject minutes.

**Motion** made by Commissioner Lawler and seconded by Vice Chair Tucker and carried (3 – 1) with Secretary Kramer abstaining to approve the minutes of October 17, 2013, as corrected.

AYES: Hillgren, Lawler and, Tucker

NOES: None

ABSTENTIONS: Kramer

ABSENT: Ameri, Brown, and Myers

**VII. STUDY SESSION**

**ITEM NO. 2 BACK BAY LANDING PCDP AND EIR (PA2011-216)**

**Site Location:** 300 E. Coast Highway

Chair Hillgren addressed the purpose for this item and noted that the Study Session is being conducted in advance of the Public Hearing for this item which will be scheduled in the near future.

Commissioner Ameri arrived at this juncture (6:35 p.m.).

Senior Planner Jaime Murillo provided a PowerPoint presentation addressing the intent of the present Study Session and noted that the current status of the property does not allow for residential development. He addressed the stages in the Development Application process, approvals required, and the Draft Environmental Impact Report (EIR). He provided an overview of the proposed project location, existing conditions and uses, project boundaries, surrounding properties, proposed lot line adjustment, required amendments to the General Plan, Coastal Land Use Plan, and Zoning map. He also provided an overview of the Planned Community Development Plan that was prepared for the project and the development standards and design guidelines contained within it, and steps for implementation.

Senior Planner Murillo presented illustrations from the Planned Community Development Plan and addressed the conceptual site plan and major elements of the same, retail and restaurant uses, proposed parking structure, boat storage, location of residential units, building height limitations, architectural theme, public access, proposed bicycle trail, public launching area for small-vessel launching, public restrooms and lockers, bulkhead standards, street and utility improvements, and project egress and ingress. In addition, he presented details of the EIR and noted that the potential impacts associated with development of the project have been analyzed. He added that the document is currently out for a forty-five (45) day public review period which will conclude on November 18, 2013, and responses to the comments received will be provided to the Planning Commission in the December 19, 2013, agenda packet.

Senior Planner Murillo addressed the scope of the EIR and noted the analysis of project alternatives. In terms of traffic, he reported that staff assumed a maximum development scenario to develop the traffic study. He also informed the Commission that staff will be providing a presentation to the Harbor Commission and will be asking for their comments regarding the project.

In response to an inquiry from Chair Hillgren, Senior Planner Murillo reported that notice was provided to properties beyond the required three hundred (300) foot radius to include Linda Isle residents, mobile home residents, Bay Shore residents, and adjacent/nearby Home Owner Associations.

Discussion followed regarding protected views, building heights established for the site and the use of established grades in measure building heights, clarification of vertical access to the shoreline and optional Coast Highway vehicular access. Regarding the latter, Senior Planner Murillo reported that it would involve the coordination of several agencies, including Caltrans and the City. He added that it is included as an option that has been analyzed in terms of potential impacts within the EIR. Recommendations will be provided by staff and the future development phase.

Deputy Community Development Director Brenda Wisneski added that the access was included as an option in the Development Plan.

City Traffic Engineer Tony Brine noted that ultimately, Caltrans will review the matter since it is a State facility.

In response to Secretary Kramer's inquiry, Senior Planner Murillo addressed the proposed architectural style. Secretary Kramer asked regarding the applicant and other involved entities and Mr. Murillo deferred to the applicant's representative for a response.

John Erskine, representing the applicant, reported that his law firm represents Terra Vista Management and the Gelfand Family and added that the mobile home and their project site is part of the three parcel map (Parcel Map 93-111). He addressed additional noticing efforts performed by his firm. He reported that the project, thus far, has taken three and a-half years (3½) and commented on prior meetings with Coastal Commission staff and the community. In terms of the existing three (3) mobile homes that would need to be demolished to accommodate the lot line adjustment, he reported that they were purchased. He addressed the proposed architectural style. He also commented positively on City staff and their efforts and that the project will be developed after consideration by the Coastal Commission.

Discussion followed regarding the possibility of providing additional public access relative to the mobile home site.

Mr. Erskine addressed challenges related to additional public access along the mobile home frontage and impacts to private residences. He added that the requirement is to provide bay front access along the development project site. Access alternatives are addressed in the EIR and it was noted that staff considered the matter, as well, in terms of consistency with the City's policies.

Ensuing discussion pertained to the proposed tower and accessibility to same, including installation of an elevator. Mr. Erskine added that it will provide opportunities for new coastal views. He noted positive reactions to the tower from Coastal staff. Additionally, he addressed the types of proposed residential units and how they will interact with the local area and surrounding neighborhood. He noted that Pearson's Point would remain.

Mr. Erskine reported that the present approvals being sought are legislative and that the exact details of the functionality and programming of residential units will be presented with the project but the units will be built to condominium standards and will be high-end. In addition, he addressed the existing sanitation pump station. He added there have been three (3) or four (4) meetings with the Orange County Sanitation District and that they are considering coordinating an upgrade to the facility and moving the sanitation facility to the west which will create a better front to the project.

Senior Planner Murillo added that the PC Development Plan encourages the applicant to work with the Sanitation District to have the facility fit in with the architectural design of the overall development.

Mr. Erskine reported that the plans are not yet at the specific-project level and that there are still negotiations that must be made. He stated that additional information will be provided during the Public Hearing.

Discussion followed regarding traffic at the intersection of Coast Highway and Bayside Drive.

City Traffic Engineer Brine reported that staff has worked with the applicant and primarily wanted to move the driveway further north, away from Coast Highway noting the need to provide sufficient queue in order to avoid a backup of traffic on Coast Highway. He added that staff did a queue analysis and a computer model simulation to ensure that this was not going to occur.

Commissioner Lawler commented on the possibility that the applicant would want to build in two (2) phases.

Senior Planner Murillo reported that staff confirmed with the applicant that the project would be built in one (1) phase of development.

Discussion followed regarding parking, minimum parking ratios for the various uses on site, the possibility of shared parking, and the total size of the project area.

Mr. Erskine added that the project area is just shy of seven (7) acres. In response to Secretary Kramer's inquiry, Mr. Erskine addressed the proposed dry-stacked boat storage facility and its operation. He added that dry-stacked storage is encouraged under Coastal Act policies.

Vice Chair Tucker commented on possible changes between the conceptual and actual plans.

Mr. Erskine noted that the project must comply with design guidelines and development standards and that it is anticipated that there will be additional environmental review. He added that discussions have occurred regarding the possibility of some parcelization for the residential area and stated that the project will be built in one (1) phase. He listed other similar projects by the applicant.

Vice Chair Tucker noted the need to plan for the future and planning for the various types of uses. He added that the PC Development Plan needs to contemplate the various possibilities for the site and noted the importance of having a uniform maintenance process while maintaining flexibility. He requested a copy of the PC Development Plan in MS-DOC binary file format (Microsoft WORD) in order to comment on it. He expressed concerns regarding the amount of commercial space and wondered if it will all lease. He stated that some has been designated as visitor-serving retail and others as other retail. He suggested broadening opportunities for retail uses. He noted that nightclub-use has been listed as one of the permitted uses and did not feel that it fits with residential uses.

It was noted the Pearson's Point is owned by a private individual and that they have expressed a desire to remain at their current location.

Vice Chair Tucker referenced the parking requirements relative to entertainment and excursion services and wondered if that is appropriate for the site.

Discussion followed regarding an easement for public access to be provided to the City. It was noted that it will be privately maintained.

Vice Chair Tucker commented on the use of high-quality materials and noted the need to keep control of the design criteria. He addressed design details on the walls, replacement of existing garages used as storage, the boat launching and haul out area, vehicular circulation, and the proposed bicycle lane on Bayside Drive.

Chair Hillgren opened public comments.

Dorothy Kraus asked if the presentation will be placed on the City's website and staff confirmed that it will be.

Bill O'Connor, a Linda Isle resident, expressed concerns that the stackable boat storage will be used by fast boats with no mufflers and noted that December 19, 2013, will be the second night of the Boat Parade and that it will be difficult for residents to attend the Planning Commission meeting. He added that there are many people who would like to attend the meeting.

Chair Hillgren closed public comments.

Vice Chair Tucker commented on the possibility of moving the meeting of December 19, 2013, to earlier in the afternoon.

Mr. Erkston indicated acceptance of having the meeting earlier in the day and hoped that the matter would be resolved before the Christmas Holiday.

## **VIII. NEW BUSINESS**

### **ITEM NO. 3 LCP IMPLEMENTATION PLAN (PA2013-001) Site Location: City-wide**

Planning Manager Patrick Alford provided a PowerPoint presentation addressing background, composition of the Coastal Commission, an overview of the Coastal Act and the requirement for all cities and counties within the Coastal Zone to produce a Local Coastal Program. He addressed Coastal Commission administration and staff, areas included in the Coastal Zone, developments in the Coastal Zone, requirements for Coastal Development permits, approvals in concept issued by the City, exemptions of the Coastal Act, restrictions and the intent to have permit authority return to the City for specific areas in the City. Additionally, he commented on deferred certification areas.

Planning Manager Alford addressed the LCP Implementation Plan and noted it, together with the Coastal Land Use Plan is similar to the City's General Plan and Zoning Code relationship. He reported that the LCP Implementation Plan will be a stand-alone document and will be a pared down version of the Zoning Code, only dealing with those areas within the Coastal Zone and only on standards that will implement policies in the Coastal Land Use Plan. He addressed organization of the document, described the various sections of the document and the inclusion of relevant portions of the City's Planned Community texts. He addressed adjustments to boundaries and presented examples of same to avoid bisection of properties and the possibility of excluding the commercial strip of the south of Coast Highway in Corona del Mar. He reported that the Coastal Commission wants standards to relate to the City's Coastal Land Use Plan policies and addressed issues with coastal canyons and bluff areas. He addressed the timeline and noted that the Coastal Commission wants to work closely with the City in developing standards before a formal submittal is made. Therefore, given the workload and complexity of issues it may need to be delayed somewhat. He addressed next steps including review and hearings before taking the matter to Council for final approval.



Chair Hillgren reported that Commissioners Ameri and Myers sit on the General Plan/LCP Implementation Committee and commented positively on the presentation.

In response to Commissioner Ameri, Mr. Alford reported that the Committee meets monthly and noted that other than the original schedule, there may be three (3) or four (4) additional meetings required. There may be a hiatus while staff works with the Coastal Commission regarding the Implementation Plan. He foresaw continuing with monthly meetings until the end of 2014.

Vice Chair Tucker commented on the role of the Committee and staff in terms of review by the Planning Commission and City Council.

Deputy Community Development Director Wisneski commented on the role of the Planning Commission and possible issues to be addressed.

Vice Chair Tucker commented on the need to know the issues of contention prior to review by the Planning Commission.

Planning Manager Alford stated this is not an "all or nothing" situation noting that there may be issues where agreements cannot be reached. He addressed the possibility of segmentation; deferring certain areas and getting the bulk of the City, certified. The document will not be duplicative of the Zoning Code but will deal with only those areas in the Coastal Zone.

Assistant City Attorney Leonie Mulvihill reported that the Zoning Code applies City-wide and that certain developments, requiring a Coastal Development permit will have a second layer in terms of the Implementation Plan.

Planning Manager Alford noted that the Implementation Plan will reflect the Zoning Code but is not a component of it.

Secretary Kramer indicated his support for the redefining of boundaries to avoid bifurcation of properties.

Mr. Alford noted there are limited parameters in terms of how far a boundary can be redefined. He addressed potential issues of contention including bluffs and canyons, tidelands areas, and Environmentally Sensitive Habitat Areas (ESHAs).

Secretary Kramer noted that parts of the Newport Center are in the Coastal Zone and others are not and suggested this is the time to question some of the original assumptions made in defining those boundaries. He added that the City should try to minimize the Coastal Zone.

Chair Hillgren commented on challenges in terms of dealing with Coastal Commission staff.

City Attorney Mulvihill added that when the Coastal Act was adopted, it legislatively established the Coastal Zone. Coastal Commission staff has held strongly to the established boundaries and she noted that when meeting with them, City staff pointed out places where it did not make sense. She added that they will consider certain deviations under certain specified circumstances. She agreed that part of the process will involve trying to have a workable document. But they have not been completely receptive.

Discussion followed regarding Coastal Commission jurisdiction and the City retaining permit authority.

City Attorney Mulvihill stated she expects a long and difficult conversation relative to the tidelands. She noted that the tidelands are publicly accessible and that the City provides for public access when approving development. That puts the City in a good position relative to retaining jurisdiction.

It was noted that the City will host an upcoming Coastal Commission meeting on November 13, 14, and 15, 2013.

Vice Chair Tucker suggested that may be a good opportunity to discuss Newport Center with them. He addressed the concept of ESHAs and related standards. He commented on the predominant line of development and streamlining and felt that the issues need clarity.

Chair Hillgren opened public comments.

Jim Mosher commented on the Coastal Zone boundaries and felt it is a question of authority and noted that the Coastal Commission is subject to the State Legislature and may not have the authority to make changes. He addressed categorical exclusions relative to demolition and construction of single- and two-family residences and requested clarification on the matter.

Mr. Alford reported that categorical exclusions orders disappear upon certification but that it is staff's intent for them to continue beyond certification.

Chair Hillgren closed public comments.

Discussion followed regarding the process for providing and moving recommendations forward and the possibility of having staff provide updates to the Planning Commission.

Chair Hillgren stated he would be happy to take back specific recommendations to the Committee.

Deputy Community Development Director Wisneski noted opportunities for providing input to the Committee.

Discussion followed regarding the difficulty in reaching agreements in terms of an Implementation Plan. It was noted that the matter takes a lot of staff time, that there are challenges with the Coastal Commission staff and that the process can be frustrating.

Secretary Kramer expressed an interest in making sure that important issues are addressed.

It was noted that the Planning Commission will have a chance to vote on the matter.

## **IX. STAFF AND COMMISSIONER ITEMS**

### **ITEM NO. 4 MOTION FOR RECONSIDERATION - None**

### **ITEM NO. 5 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT**

#### **Committee Updates:**

#### **1. Land Use Element Amendment Advisory Committee**

Deputy Community Development Director Wisneski reported that the Land Use Element Amendment Advisory Committee met earlier this week and discussed the policies of the Land Use Element.

It was noted that several comments were received regarding policies and that the next meeting will be held on December 3, 2013, to review the policies in detail.

### **ITEM NO. 6 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT**

Vice Chair Tucker requested placing consideration of changing the meeting time for the December 19, 2013, meeting of the Planning Commission, on the next agenda.

### **ITEM NO. 7 REQUESTS FOR EXCUSED ABSENCES**

Commissioner Lawler and Secretary Kramer requested to be excused from the November 21, 2013, Planning Commission meeting.

**X. ADJOURNMENT**

There being no further business to come before the Planning Commission, the meeting was adjourned at 8:51 p.m.

The agenda for the Regular Meeting was posted on November 1, 2013, at 4:00 p.m., in the binder and on the City Hall Electronic Bulletin Board located in the entrance of the Council Chambers at 100 Civic Center Drive.

\_\_\_\_\_  
Bradley Hillgren, Chair

\_\_\_\_\_  
Kory Kramer, Secretary

**CITY OF NEWPORT BEACH**  
**PLANNING COMMISSION STAFF REPORT**

November 21, 2013 Meeting

Agenda Item 2

**SUBJECT:** Davis Lot Merger and Setback Determination - PA2013-176  
106 6th Street and 524 West Ocean Front

- Lot Merger No. LM2013-003
- Staff Approval No. SA2013-011 for an Alternative Setback Determination

**APPLICANT:** Morgan Davis

**PLANNER:** Fern Nueno, Associate Planner  
(949) 644-3227, [fnueno@newportbeachca.gov](mailto:fnueno@newportbeachca.gov)

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**PROJECT SUMMARY**

A lot merger application and a request to waive the parcel map requirement for two properties, under common ownership, located on Balboa Peninsula. The merger would combine the two parcels into one lot for a single-unit residential development. The applicant also requests an Alternative Setback Determination, which is intended in cases where the orientation of an existing lot and the application of the standard setbacks are not consistent with other lots in the vicinity. The Alternative Setback Determination would establish all setbacks generally consistent with adjacent properties.

**RECOMMENDATION**

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. \_\_\_\_ approving Lot Merger No. LM2013-003 and Staff Approval No. SA2013-011 (Attachment No. PC 1).





LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Single-Unit Residential Detached (RS-D)	Single-Unit Residential (R-1)	Single-unit dwellings
NORTH	Two-Unit Residential (RT) and Mixed-Use Vertical (MU-V)	Two-Unit Residential (R-2) and Mixed-Use Vertical (MU-V)	Duplexes and mixed-use structures
SOUTH	Parks and Recreation (PR)	Parks and Recreation (PR)	Beach
EAST	Single-Unit Residential Detached (RS-D)	Single-Unit Residential (R-1)	Single-unit dwellings
WEST	Single-Unit Residential Detached (RS-D)	Single-Unit Residential (R-1)	Single-unit dwellings

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## **INTRODUCTION**

### **Project Setting**

The subject properties are located on the Balboa Peninsula on West Ocean Front and 6<sup>th</sup> Street. Each lot is developed with a single-unit residential dwelling. The 106 6<sup>th</sup> Street lot is 2,100 square feet in area (30' X 70') and the 524 West Ocean Front lot is 3,150 square feet in area (35' X 90'). The typical lots in the area are 30 feet in width and 70 feet in depth; however, several lots in the area are wider than 30 feet. The subject properties are relatively flat with an average slope of less than 20 percent.

### **Project Description**

The Lot Merger application would result in one 5,250-square-foot lot for single-unit residential development. The 106 6<sup>th</sup> Street lot is developed with a single-unit dwelling with vehicular access from the alley. The 524 West Ocean Front lot is developed with a single-unit dwelling with two one-car garages accessed from 6<sup>th</sup> Street. One unit would be demolished as part of the Lot Merger project. Plans for redeveloping the site have not been submitted and are not required to consider the subject application. The applicant has indicated an intent to demolish the house located at 106 6<sup>th</sup> Street, to construct a garage off of the alley, and to connect the garage to the existing house located at 524 West Ocean Front. The applicant requests the Alternative Setback Determination to establish setbacks other than the default setbacks that would be required for the merged lot.

### **Background**

The applicant originally requested the Lot Merger, which was scheduled for review by the Zoning Administrator on October 24, 2013. However, prior to the Zoning Administrator Hearing, the applicant amended the application to request an Alternative Setback Determination, which is typically reviewed by the Planning Commission. The Zoning Administrator forwarded the Lot Merger application to be reviewed concurrently with the requested alternative setbacks by the Planning Commission. The staff report is provided as Attachment No. PC 3 and the correspondence received for that hearing is Attachment No. PC 4.

On September 10, 2013, the City Council approved Ordinance No. 2013-17, amending Title 19 (Subdivisions) to revise the required findings for Lot Mergers. The ordinance became effective on October 24<sup>th</sup>, and the application has been evaluated based upon these new findings.

## **DISCUSSION**

### **Analysis**

#### *General Plan, Local Coastal Plan, and Zoning Code*

The Land Use Element of the General Plan designates the subject properties for Single-Unit Residential Detached (RS-D) uses. The Coastal Land Use Plan also designates the subject properties as Single Unit Residential Detached (RSD-C), which provides for single-unit residential development. The subject properties are located within the Single-Unit Residential (R-1) Zoning District, which is intended to provide for areas appropriate for a detached single-family residential dwelling units located on a single lot. The proposed project is consistent with these designations, as the merged lot will retain the designations, and one unit will be demolished.

Consistent with General Plan Policy LU 6.16.3 (Property Access) and Coastal Land Use Plan Policy 2.9.3-10, future redevelopment of the property will provide vehicular access from the alley and the curb cut on 6<sup>th</sup> Street will be closed, as required by Condition of Approval No. 5 in the draft Resolution.

#### *Lot Merger*

Redevelopment of the site would be required to be consistent with the Zoning Code standards, including, floor area, setback requirements, and 3-car garage parking for a house with over 4,000 square feet of floor area. Section 20.18.030 of the Zoning Code establishes minimum lot width and area requirements. Due to the shape and corner location, the proposed lot would not meet the lot width requirement of 60 feet or the minimum lot size for newly created lots of 6,000 square feet in area. However, the resulting merged lot would be more consistent with these minimum requirements. The typical lots in the area are not consistent with the minimum width and area requirements of the Zoning Code because of how the area was originally subdivided and developed; however, lots that have been merged and reoriented in the past are generally consistent with current width and area requirements, which are shown in Table 2.

The merged lot will retain the R-1 zoning designation, consistent with the surrounding area, and one of the existing dwelling units will be demolished prior to recordation of the Lot Merger. This will result in reduced density and a small decrease in traffic and parking demand. Furthermore, future redevelopment of the property will require closure of an existing driveway approach on 6<sup>th</sup> Street and vehicular access from the alley, resulting in additional on-street parking. The merged lot will not be deprived of legal access as the lot will abut a street, an alley, and the beach front walk. No adjoining parcels will be deprived of legal access as a result of the merger, as vehicular access to and from the subject site and adjacent properties would remain via public alleys.



The new finding for consideration is Finding E in the draft Resolution:

- E. The lots as merged will be consistent with the pattern of development nearby and will not result in a lot width, depth or orientation, or development site that is incompatible with nearby lots. In making this finding, the review authority may consider the following:*
- a. Whether development of the merged lots could significantly deviate from the pattern of development of adjacent and/or adjoining lots in a manner that would result in an unreasonable detriment to the use and enjoyment of other properties.*
  - b. Whether the merged lots would be consistent with the character or general orientation of adjacent and/or adjoining lots.*
  - c. Whether the merged lots would be conforming or in greater conformity with the minimum lot width and area standards for the zoning district*

The combined lot would not be rectangular in shape as is typical for the area. However, the application of the alternative setbacks would ensure the development is consistent with the neighborhood. The house that could be constructed on the merged lot would be longer than most houses in the area as viewed from 6<sup>th</sup> Street, but the project viewed from the alley and West Ocean Front would remain unchanged. Staff believes that from the 6<sup>th</sup> Street vantage point, there will not be a significant deviation from the existing lot configuration with the articulation that would be provided by the suggested setbacks along the street.

Several lots in the area have been reoriented to front on West Ocean Front and West Balboa Boulevard, and 6<sup>th</sup> Street has both front and sides of residential structures facing the street. The merged lot will not meet the 60-foot lot width standard of the R-1 zone despite the added width. Additionally, the merged lot will be 5,250 square feet in area and closer to conformity with the minimum 6,000-square-foot lot area standard. While the lots in the immediate vicinity are typically 70 or 90 feet deep, a 120-foot deep lot is not a significant deviation to the pattern of development to the detriment of surrounding properties.

Pursuant to Zoning Code Section 19.08.030, the Planning Commission may waive the requirements for a parcel map for mergers resulting in the net elimination of no more than three parcels. In this case, the Lot Merger would result in one parcel being eliminated and staff recommends the waiver of the parcel map. The Lot Merger exhibit is provided as Attachment No. PC 4.

#### *Alternative Setback Determination*

Zoning Code Section 20.30.110 (C) states that in cases where the orientation of an existing lot and the application of the setback area are not consistent with the character or general orientation of other lots in the vicinity, the Community Development Director may redefine the location of the front, side, and rear setback areas to be consistent with

surrounding properties. The applicant requests the Alternative Setback Determination to establish setbacks should the Lot Merger be approved. To ensure surrounding property owners are notified, the staff referred the request to the Planning Commission for consideration and final action.

To determine the appropriate setback requirements, staff considered the proximity of buildings, the resulting floor area ratio, other relevant development standards, and maneuvering within the alley. The proposed setback areas were compared with staff's recommendation for the subject lot, standard setbacks for typical lots in the area, and standard setbacks for wider than typical lots in the area.

### Setback Compatibility

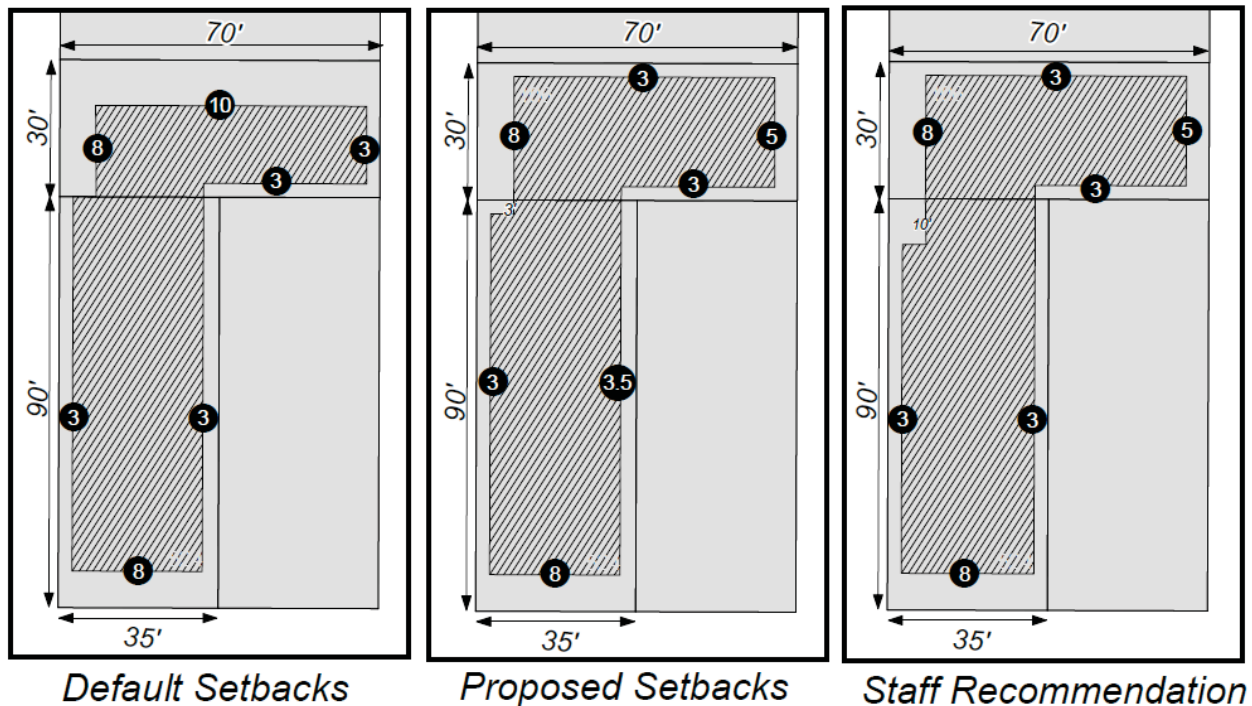
The default setbacks for the merged lot are depicted below and in Attachment No. PC 5. The front setback along West Ocean Front and 6<sup>th</sup> Street are designated as 8 feet by the Setback Map (Attachment No. PC 6). The rear and side setback requirements are established pursuant to Zoning Code Section 20.18.030. The required rear setback is 10 feet for the northernmost property line adjacent to 523 Balboa Blvd. The 6<sup>th</sup> Street side setback is 3 feet, the interior side setbacks are 3 feet, and the side setback to the alley would be 3 feet.

As depicted below and in Attachment No. PC 5, the applicant proposes to maintain the 8-foot front setbacks along West Ocean Front and 6<sup>th</sup> Street established on the Setback Map, and to continue the 8-foot setback southerly within the West Ocean Front lot for an additional 3 feet. The applicant requests a 3-foot rear setback along the northernmost property line. The applicant requests a 5-foot side setback to the alley, 3-foot street side setback, 3-foot interior side setback on the property line adjacent to the rear of the 522 West Ocean Front lot, and a 3.5-foot interior side setback from the eastern property line shared with 522 West Ocean Front.

The applicant and staff are in agreement with the front, alley, street-side, and the 3-foot interior side setback on the property line adjacent to the rear of the 522 West Ocean Front lot. Staff agrees with the 3-foot rear setback request because the rear setback area abuts the side setback of the adjacent lot and there would be a typical 6-foot separation between buildings on abutting lots, which is not detrimental to either lot. One purpose for the 10-foot rear yard setback is to provide usable outdoor open space, but in this case, the beach-facing front yard setback provides outdoor open space. Furthermore, the default 10-foot rear setback would not allow enough width at the alley to construct a typical 2-car garage.

Staff's recommendation (shown below and in Attachment No. PC 5) differs from the applicant's request in two areas: the extension of the 8-foot setback along 6<sup>th</sup> Street and the interior side setback from the eastern property line shared with 522 West Ocean Front. Staff believes a larger street side setback area will provide additional building articulation and reduce the length of the building mass in one position. It will also

provide additional open area abutting the street. The difference between 3 and 3.5 feet is not significant and a 3-foot interior side setback would be consistent with the Zoning Code requirement for a 35-foot wide lot, and would provide the typical separation between the subject property and 522 West Ocean Front. A 3-foot setback will not preclude a house from being setback greater than 3 feet. Staff believes that the recommended setbacks are compatible with the neighborhood, provide adequate setback area for light and air, would not be detrimental to the adjacent properties, and would meet the intent of the Zoning Code setback area requirements.



#### Development Standard Comparison

Setback areas determine the buildable area of the lot, which affects other development standards. Section 20.48.180 (Residential Development Standards and Design Criteria) establishes third floor area limitations of 15 percent of the buildable area (for lots wider than 30 feet) and an open volume requirement of 15 percent of the buildable area. The third floor is also required to step back an additional 15 feet from the front and rear setback lines and 2 feet from the side setback lines (for lots 30 feet or wider). Due to the L-shape of the merged lot, staff recommends that the 15-foot third floor step backs be measured from the front setback line along West Ocean Front and the rear setback line. The 2-foot side step backs would be required from 6th Street side and interior side setbacks. Table 1 provides a comparison of the buildable area, third floor area, and open volume requirement for the subject property with default setbacks, as proposed by the applicant, and staff's recommendation, and for a typical lot and wider lot in the area.

**Table 1**  
**Development Standard Comparison**

	<b>Buildable area (SF) <sup>1</sup></b>	<b>Third Floor Area (SF)</b>	<b>Open Volume (SF)</b>
Merged Lot - Default	3,453	518	518
Applicant Proposed	3,760.5	555	555
Staff Recommendation	3,768	565	656
Typical - 30' X 70'	1,368	205	205
Wider lot - 45' X 70'	2,109	316	316

<sup>1</sup> The buildable area of a lot is the lot area excluding the required setback areas.

### Floor Area Comparison

Table 2 provides a comparison of the lot area, buildable area, floor area limit (FAL), floor area ratio (FAR), and setback area as a percentage of the lot area for the applicant's request, staff's recommendation, typical lots in the area, and wider lots in the area. The FAR is the floor area to lot area ratio and is a method to compare the maximum square footage allowed on a site based on the lot size.

**Table 2**  
**Floor Area and Setback Comparison**

	<b>Lot Area (SF)</b>	<b>Buildable Area (SF)</b>	<b>FAL (SF) <sup>1</sup></b>	<b>FAR</b>	<b>Setback as % of Lot</b>
Subject Lot					
Merged - Default Setbacks	5,250	3,453	6,906	1.32	34.23
Applicant Proposed	5,250	3,760.5	7,521	1.43	28.37
Staff Recommendation	5,250	3,768	7,536	1.44	28.23
Typical Lot in Area					
30' X 70'	2,100	1,368	2,736	1.30	34.86
Nearby Lots					
522 W. Ocean Front - 35' X 90'	3,150	2,233	4,466	1.42	29.11
514 W. Ocean Front - 45' X 70'	3,150	2,109	4,218	1.34	33.05
620 W. Ocean Front - 60' X 70'	4,200	3,068	6,136	1.46	26.95
628 W. Ocean Front - 70' X 90'	6,300	4,884	9,768	1.55	22.48
706 W. Ocean Front - 60' X 70'	4,200	2,964	5,928	1.41	29.43

<sup>1</sup> The FAL (maximum square footage) for R-1 properties on the Balboa Peninsula is two (2) times the buildable area of the lot.

The applicant's proposed setbacks provide an FAR of 1.43 and FAL of 7,521 square feet, which are higher than the typical lots in the area, but comparable to nearby larger lots. The maximum square footage that could be built on the subject lot would increase by approximately 615 square feet with the proposed alternative setbacks as compared with the default setbacks. As proposed, the setback area as a percentage of the lot would be less than the typical lots in the area, but similar to the larger lots in the vicinity.

The staff recommended setbacks provide an FAR of 1.44 and FAL of 7,536 square feet, which are higher than the typical lots in the area, but comparable to nearby larger lots. The staff recommendation includes a setback area as a percentage of the lot that would be less than the typical lots in the area, but similar to the nearby larger lots.

### *Summary*

The applicant requests the Lot Merger and Alternative Setback Determination resulting in an L-shaped lot that is larger than typical lots in the area, but not necessarily out of character with the neighborhood. Despite the fact that the house that could be built after the merger would be larger and longer than other homes on the area, staff believes the project can be found compatible considering appropriate setbacks of the building bulk, FAR of larger nearby lots, reduced density in the area, alley access for the property, and additional on-street parking.

### Alternatives

The Planning Commission could deny the Lot Merger application if any of the required findings cannot be made. Should the Lot Merger application be denied, the Alternative Setback Determination would not be applicable and would necessitate denial as well.

In conjunction with approval of the Lot Merger application, the Planning Commission could deny or modify the Alternative Setback Determination. If the request for Alternative Setbacks is denied, the subject property would retain the default setbacks.

### Environmental Review

The project is categorically exempt under Section 15305, of the California Environmental Quality Act (CEQA) Guidelines - Class 5 (Minor Alterations in Land Use Limitations), which exempts minor alterations in land use limitations in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density. The proposed project would merge the lots and alter the required setbacks, but will not result in a physical change to the existing lot, or any changes in land use or density.


Public Notice

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:

  
Fern Nueno, Associate Planner

Submitted by:

  
Brenda Wisneski, AICP, Deputy Director

**ATTACHMENTS**

- PC 1 Draft Resolution – Approve
- PC 2 Draft Resolution – Deny
- PC 3 Zoning Administrator Staff Report from October 24, 2013
- PC 4 Correspondence Received
- PC 5 Lot Merger
- PC 6 Setback Comparison
- PC 7 Setback Map S-2E (excerpt)



# **Attachment No. PC 1**

Draft Resolution – Approve





**RESOLUTION NO. ####**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING LOT MERGER NO. LM2013-003 AND STAFF APPROVAL NO. SA2013-011 FOR A LOT MERGER AND ALTERNATIVE SETBACK DETERMINATION LOCATED AT 106 6<sup>TH</sup> STREET AND 524 WEST OCEAN FRONT (PA2013-176)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Morgan Davis, with respect to property located at 106 6<sup>th</sup> Street and 524 West Ocean Front, and legally described as Lot 15, Block 10, East Newport Tract and Parcel 1 of Lot Line Adjustment LLA2001-008 requesting approval of a Lot Merger and Alternative Setback Determination.
2. The applicant proposes to merge the two lots and requests a waiver of the parcel map requirement. The applicant also requests an Alternative Setback Determination to establish all required setbacks for the merged lot.
3. The subject properties are designated as Single-Unit Residential Detached (RS-D) in the General Plan Land Use Element and are located within the Single-Unit Residential (R-1) Zoning District.
4. The subject properties are located within the coastal zone and the Coastal Land Use Plan category is Single Unit Residential Detached (RSD-C).
5. Zoning Code Section 20.30.110 (C) states that in cases where the orientation of an existing lot and the application of the setback area are not consistent with the character or general orientation of other lots in the vicinity, the Community Development Director may redefine the location of the front, side, and rear setback areas to be consistent with surrounding properties. In this case, so that surrounding property owners would be notified of the application, the Community Development Director referred the request to the Planning Commission for consideration and final action.
6. A public hearing was held on October 24, 2013, in the Corona del Mar Conference Room at 100 Civic Center Drive, Newport Beach, related to the requested Lot Merger only. A notice of time, place, and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting. The Zoning Administrator referred the Lot Merger application to the Planning Commission to allow for concurrent review with the Alternative Setback Determination.

7. A public hearing was held on November 21, 2013, in the City Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of time, place, and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 5 (Minor Alterations in Land Use Limitations).
2. Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density. The proposed project would merge the lots and alter the required setbacks, but will not result in a physical change to the existing lot or structure, or any changes in land use or density.
3. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

## SECTION 3. REQUIRED FINDINGS.

### Lot Merger

In accordance with Section 19.68.030 and 19.08.030 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth in regards to the subject lot merger:

#### Finding:

- A. *Approval of the merger will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City, and further that the proposed lot merger is consistent with the legislative intent of this title.*

#### Facts in Support of Finding:

1. The lot merger to combine two existing legal lots by removing the interior lot line between the lots will not result in the creation of additional parcels.

2. The project is in an area with an average slope of less than 20 percent.
3. Pursuant to Municipal Code requirements, redevelopment of the property will require vehicular access from the alley and closure of an existing curb cut on 6<sup>th</sup> Street creating additional on-street parking.
4. The future development on the proposed parcel will be subject to the Zoning Code development standards, including, floor area, setback requirements, and 3-car garage parking for a house with over 4,000 square feet of floor area.
5. The Alternative Setback Determination will ensure that setback requirements and future development on the merged lot are consistent with surrounding properties and will provide adequate space for vehicle maneuverability in the alley.

Finding:

*B. The lots to be merged are under common fee ownership at the time of the merger.*

Facts in Support of Finding:

1. The two lots to be merged are under common fee ownership.

Finding:

*C. The lots as merged will be consistent or will be more closely compatible with the applicable zoning regulations and will be consistent with other regulations relating to the subject property including, but not limited to, the General Plan and any applicable Coastal Plan or Specific Plan.*

Facts in Support of Finding:

1. The merged lot will retain the Single-Unit Residential zoning designation, consistent with the surrounding area. The R-1 Zoning District is intended to provide for areas appropriate for a detached single-family residential dwelling units located on a single lot.
2. A minimum of one (1) single-unit dwelling located on the subject lots will be demolished prior to recordation of the Lot Merger, resulting in the merged lot containing one (1) dwelling unit, consistent with the General Plan, Coastal Land Use Plan, and Zoning Code.
3. Section 20.18.030 of the Zoning Code establishes minimum lot area and width requirements. Each of the two existing lots provide less than the minimum lot area and lot width requirements of the Zoning Code. The proposed merger of the lots would create one 5,250-square-foot parcel that will be more consistent with the minimum lot standards of the Zoning Code.

4. The Land Use Element of the General Plan designates the subject site as Single-Unit Residential Detached (RS-D), which applies to a range of single-family residential dwelling units. The Coastal Land Use Plan designates this site as Single-Unit Residential Detached (RSD-C) which provides for density ranges from 10.0-19.9 dwelling units per acre. The land use will remain the same and the merger is consistent with the land use designations of the General Plan and Coastal Land Use Plan.
5. Future redevelopment of the property will provide vehicular access from the alley, consistent with General Plan and Coastal Land Use Plan policies.
6. The subject property is not located within a Specific Plan area.

Finding:

*D. Neither the lots as merged nor adjoining parcels will be deprived of legal access as a result of the merger.*

Facts in Support of Finding:

1. The lots as merged will not be deprived of legal access as the merged lot will abut a street, an alley, and a beach front walk.
2. No adjoining parcels will be deprived of legal access as a result of the merger. The public alleys were developed to provide vehicular access for the properties located in the area, and vehicular access to and from the subject site and adjacent properties would remain via existing public alleys.

Finding:

*E. The lots as merged will be consistent with the pattern of development nearby and will not result in a lot width, depth or orientation, or development site that is incompatible with nearby lots. In making this finding, the review authority may consider the following:*

- a. Whether development of the merged lots could significantly deviate from the pattern of development of adjacent and/or adjoining lots in a manner that would result in an unreasonable detriment to the use and enjoyment of other properties.*
- b. Whether the merged lots would be consistent with the character or general orientation of adjacent and/or adjoining lots.*
- c. Whether the merged lots would be conforming or in greater conformity with the minimum lot width and area standards for the zoning district.*

Facts in Support of Finding:

1. The house that could be constructed on the merged lot would be longer than most houses in the area as viewed from 6<sup>th</sup> Street, but the project views from the alley and West Ocean Front would remain unchanged and would be typical for the area. The overall length of what could be developed from the vantage point of 6<sup>th</sup> Street is

mitigated by a larger setback by providing enhanced building articulation and open space.

2. Several lots in the area have been reoriented to front on West Ocean Front and West Balboa Boulevard, and 6<sup>th</sup> Street has both front and sides of residential lots and structures facing the street; therefore, the merger would not result in development that is inconsistent with the neighborhood.
3. The standard lot size of lots in the area is 30 feet by 70 feet (2,100 square feet), with nearby lots ranging from 1,830 to 6,289 square feet in area. The lots as merged will result in a 5,250-square-foot parcel that is larger than the typical lot in the area, but smaller than the minimum 6,000-square-foot lot size requirement of the Zoning Code. Therefore, the lots as merged will not create an excessively large lot that would be incompatible with the surrounding development.
4. While the lots in the immediate vicinity are typically 70 or 90 feet deep, a 120-foot deep lot is not a significant deviation to the pattern of development to the unreasonable detriment of surrounding properties.
5. Section 20.18.030 of the Zoning Code establishes minimum lot area and width requirements. Each of the two existing lots provide less than the minimum lot area and lot width requirements of the Zoning Code. The proposed merger of the lots would create one 5,250-square-foot parcel that will be more consistent with the minimum lot standards of the Zoning Code.

Finding:

*F. The proposed division of land complies with requirements as to area, improvement and design, flood water drainage control, appropriate improved public roads and property access, sanitary disposal facilities, water supply availability, environmental protection, and other applicable requirements of this title, the Zoning Code, the General Plan, and any applicable Coastal Plan or Specific Plan.*

Facts in Support of Finding:

1. Future improvements on the site will be required to comply with the development standards of the Municipal Code, General Plan, and Coastal Land Use Plan.
2. The proposed lot merger combines the properties into a single parcel of land and does not result in the elimination of more than one lot.
3. Approval of the proposed lot merger would remove the existing interior lot line, and allow the property to be used as a single site. The proposed lot would comply with all design standards and improvements required for new subdivisions by Title 19, General Plan, and Coastal Land Use Plan.
4. The subject property is not subject to a Specific Plan.

### Alternative Setback Determination

In accordance with Zoning Code Section 20.30.110 (C), the following findings are set forth in regards to the subject Alternative Setback Determination:

1. The Municipal Code does not set forth any required findings for the approval of Alternative Setback Determinations. The application was reviewed for compatibility with the neighborhood based on setback area, floor area ratio (FAR), and other development standards, to ensure that alternative setbacks do not result in development that would be incompatible with and not detrimental to the neighborhood.
2. The application of the standard Single-Unit Residential (R-1) setbacks will result in a buildable area inconsistent with other lots in the vicinity and in the R-1 Zoning District by establishing a 10-foot rear setback adjacent to a side setback and a 3-foot side setback along a narrow alley when typically a rear yard setback of 5 feet would be required.
3. The alternative setback determination will not be detrimental to the neighborhood. The 5-foot side setback to the alley will improve vehicular maneuverability in the alley and be consistent with how typical alley setbacks are regulated. The 3-foot interior side setback and 8-foot front setback requirements are consistent with surrounding properties. The 8-foot street side setback will increase building articulation and open space mitigating the overall length of the building as viewed from 6<sup>th</sup> Street. The application of the alternative setbacks will allow development of the property with a floor area ratio that is comparable with nearby lots.

### SECTION 4. DECISION.

#### **NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby approves Lot Merger No. LM2013-003 and Staff Approval No. SA2013-011, subject to the conditions set forth in Exhibit A and subject to the setbacks set forth in Exhibit B, which are attached hereto and incorporated by reference.
2. The Lot Merger action shall become final and effective ten (10) days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.
3. The Alternative Setback Determination Staff Approval action shall become final and effective 14 days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 21<sup>ST</sup> DAY OF NOVEMBER, 2013.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Bradley Hillgren, Chairman

BY: \_\_\_\_\_  
Kory Kramer, Secretary



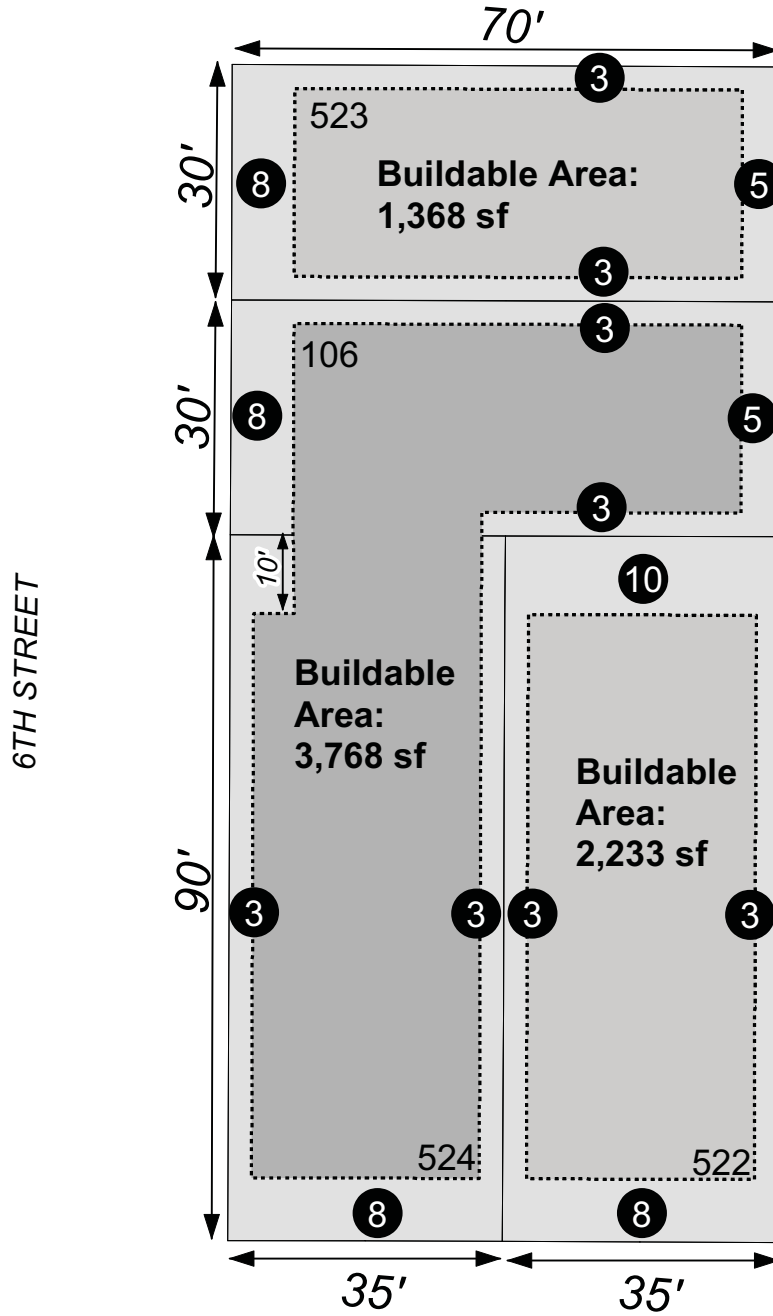
**EXHIBIT "A"****CONDITIONS OF APPROVAL****PLANNING**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the property owner or the leasing agent.
3. Prior to recordation of the lot merger, one or both dwelling units shall be demolished to ensure that no more than one (1) single-unit dwelling exists on the merged lot.
4. Prior to the issuance of any building permit for construction to cross the existing interior lot line between the two lots proposed to be merged, recordation of the lot merger documents with the County Recorder shall be required.
5. Prior to the final of any building permit or certificate of occupancy, the curb cut on 6<sup>th</sup> Street shall be closed.
6. The 5-foot side setback to the alley shall remain free and clear of any obstructions. There shall be no parking of vehicles within the 5-foot setback.
7. All improvements shall be constructed as required by Ordinance and the Public Works Department.
8. An encroachment permit is required for all work activities within the public right-of-way.
9. Lot Merger No. LM2013-003 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
10. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Davis Lot Merger and Setback Determination including, but not limited to, the Lot Merger No. LM2013-003 and Staff Approval SA2013-011. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant

shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

# EXHIBIT "B"

WEST BALBOA BLVD.



WEST OCEAN FRONT



## 524 West Ocean Front and 106 6th Street PA2013-176 Determination of Alternative Setback Area Locations

0 10 20 Feet



NEWPORT  
Info  
NEWPORT INFORMATION SYSTEMS

## **Attachment No. PC 2**

Draft Resolution – Deny



**RESOLUTION NO. #####**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF NEWPORT BEACH DENYING LOT MERGER NO.  
LM2013-003 AND STAFF APPROVAL NO. SA2013-011 FOR A  
LOT MERGER AND ALTERNATIVE SETBACK  
DETERMINATION LOCATED AT 106 6<sup>TH</sup> STREET AND 524  
WEST OCEAN FRONT (PA2013-176)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS  
FOLLOWS:

**SECTION 1. STATEMENT OF FACTS.**

1. An application was filed by Morgan Davis, with respect to property located at 106 6<sup>th</sup> Street and 524 West Ocean Front, and legally described as Lot 15, Block 10, East Newport Tract and Parcel 1 of Lot Line Adjustment LLA2001-008 requesting approval of a Lot Merger and Alternative Setback Determination.
2. The applicant proposes to merge the two lots and requests a waiver of the parcel map requirement. The applicant also requests an Alternative Setback Determination to establish all required setbacks for the merged lot.
3. The subject properties are designated as Single-Unit Residential Detached (RS-D) in the General Plan Land Use Element and are located within the Single-Unit Residential (R-1) Zoning District.
4. The subject properties are located within the coastal zone and the Coastal Land Use Plan category is Single Unit Residential Detached (RSD-C).
5. Zoning Code Section 20.30.110 (C) states that in cases where the orientation of an existing lot and the application of the setback area are not consistent with the character or general orientation of other lots in the vicinity, the Community Development Director may redefine the location of the front, side, and rear setback areas to be consistent with surrounding properties. In this case, so that surrounding property owners would be notified of the application, the Community Development Director referred the request to the Planning Commission for consideration and final action.
6. A public hearing was held on October 24, 2013, in the Corona del Mar Conference Room at 100 Civic Center Drive, Newport Beach, related to the requested Lot Merger only. A notice of time, place, and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting. The Zoning Administrator referred the Lot Merger application to the Planning Commission to allow for concurrent review with the Alternative Setback Determination.

7. A public hearing was held on November 21, 2013, in the City Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of time, place, and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

## SECTION 3. REQUIRED FINDINGS.

### Lot Merger

The Planning Commission may approve a conditional use permit only after making each of the required findings set forth in Section 19.68.030 and 19.08.030. In regards to the subject Lot Merger, the Planning Commission was unable to make the required findings based upon the following:

- 1.

### Alternative Setback Determination

The Municipal Code does not set forth any required findings for the approval of Alternative Setback Determinations. The application was reviewed for compatibility with the neighborhood based on setback area, floor area ratio (FAR), and other development standards, to ensure that alternative setbacks do not result in development that would be incompatible with and not detrimental with the neighborhood. In regards to the subject Alternative Setback Determination, the Planning Commission found the application to be detrimental to the neighborhood based upon the following:

- 1.

## SECTION 4. DECISION.

### **NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby denies Lot Merger No. LM2013-003 and Staff Approval No. SA2013-011.
2. The Lot Merger action shall become final and effective ten (10) days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

3. The Alternative Setback Determination Staff Approval action shall become final and effective 14 days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 21<sup>ST</sup> DAY OF NOVEMBER, 2013.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Bradley Hillgren, Chairman

BY: \_\_\_\_\_  
Kory Kramer, Secretary





## **Attachment No. PC 3**

Zoning Administrator Staff Report from  
October 24, 2013





COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION  
100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915  
(949) 644-3200 Fax: (949) 644-3229  
[www.newportbeachca.gov](http://www.newportbeachca.gov)

**CITY OF NEWPORT BEACH  
ZONING ADMINISTRATOR STAFF REPORT**

October 24, 2013  
Agenda Item No. 6

**SUBJECT:** Davis Lot Merger - PA2013-176  
106 6th Street and 524 West Ocean Front  
Lot Merger No. LM2013-003

**APPLICANT:** Morgan Davis

**PLANNER:** Fern Nueno, Associate Planner  
(949) 644-3227, [fnueno@newportbeachca.gov](mailto:fnueno@newportbeachca.gov)

---

**ZONING DISTRICT/GENERAL PLAN**

- **Zone:** R-1 (Single-Unit Residential)
- **General Plan:** RS-D (Single-Unit Residential Detached)

**PROJECT SUMMARY**

A lot merger application and a request to waive the parcel map requirement for two properties, under common ownership, located on Balboa Peninsula. The merger would combine the two parcels into one lot for single-unit residential development.

**RECOMMENDATION**

Forward application to the Planning Commission for review concurrently with an Alternative Setback Determination application.

**DISCUSSION**

In conjunction with the Lot Merger application, the applicant requests an Alternative Setback Determination, which is reviewed by the Planning Commission. The Alternative Setback Determination is intended in cases where the orientation of an existing lot and the application of the setback area are not consistent with other lots in the vicinity. This will ensure that setback requirements for the merged lot and future development are consistent with surrounding properties.

## **ENVIRONMENTAL REVIEW**

The project is categorically exempt under Section 15305, of the California Environmental Quality Act (CEQA) Guidelines - Class 5 (Minor Alterations in Land Use Limitations), which exempts minor alterations in land use limitations in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density.

## **PUBLIC NOTICE**

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant, and posted on the subject property at least 10 days before the scheduled hearing, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website. Should the application be forwarded to Planning Commission, notice of the hearing would be provided pursuant to the Brown Act.

Prepared by:

  
\_\_\_\_\_  
Fern Nueno, Associate Planner

JC/fn

Attachments:      ZA 1      Vicinity Map  
                         ZA 2      Project Plans

# **Attachment No. ZA 1**

Vicinity Map

# VICINITY MAP



Lot Merger No. LM2013-003  
PA2013-176

**106 6th Street and 524 West Ocean Front**

# **Attachment No. ZA 2**

Project Plans



EXHIBIT "A"  
CITY OF NEWPORT BEACH  
LOT LINE ADJUSTMENT L.A. 2013-  
(LEGAL DESCRIPTION)

SHEET 1 OF 3

OWNER	EXISTING PARCELS AP NUMBER	PROPOSED PARCELS REFERENCE NUMBER
MORGAN W. DAVIS AND SANDRA L. DAVIS, TRUSTEES OF THE DAVIS FAMILY TRUST	048-073-02	PARCEL 1
	048-073-29	PARCEL 1

PARCEL 1:

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOT 15 IN BLOCK 10 OF EAST NEWPORT, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON MAP RECORDED IN BOOK 3, PAGE 37 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

TOGETHER WITH:

TOGETHER WITH PARCEL 1 OF LOT LINE ADJUSTMENT NUMBER 2001-008  
AS PER DOCUMENT RECORDED AS INSTRUMENT NUMBER 20020811323  
IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CA.



PREPARED BY :



RON MIEDEMA L.S. 4653  
REGISTRATION EXPIRES 9-30-2013

DATE: 07-22-2013

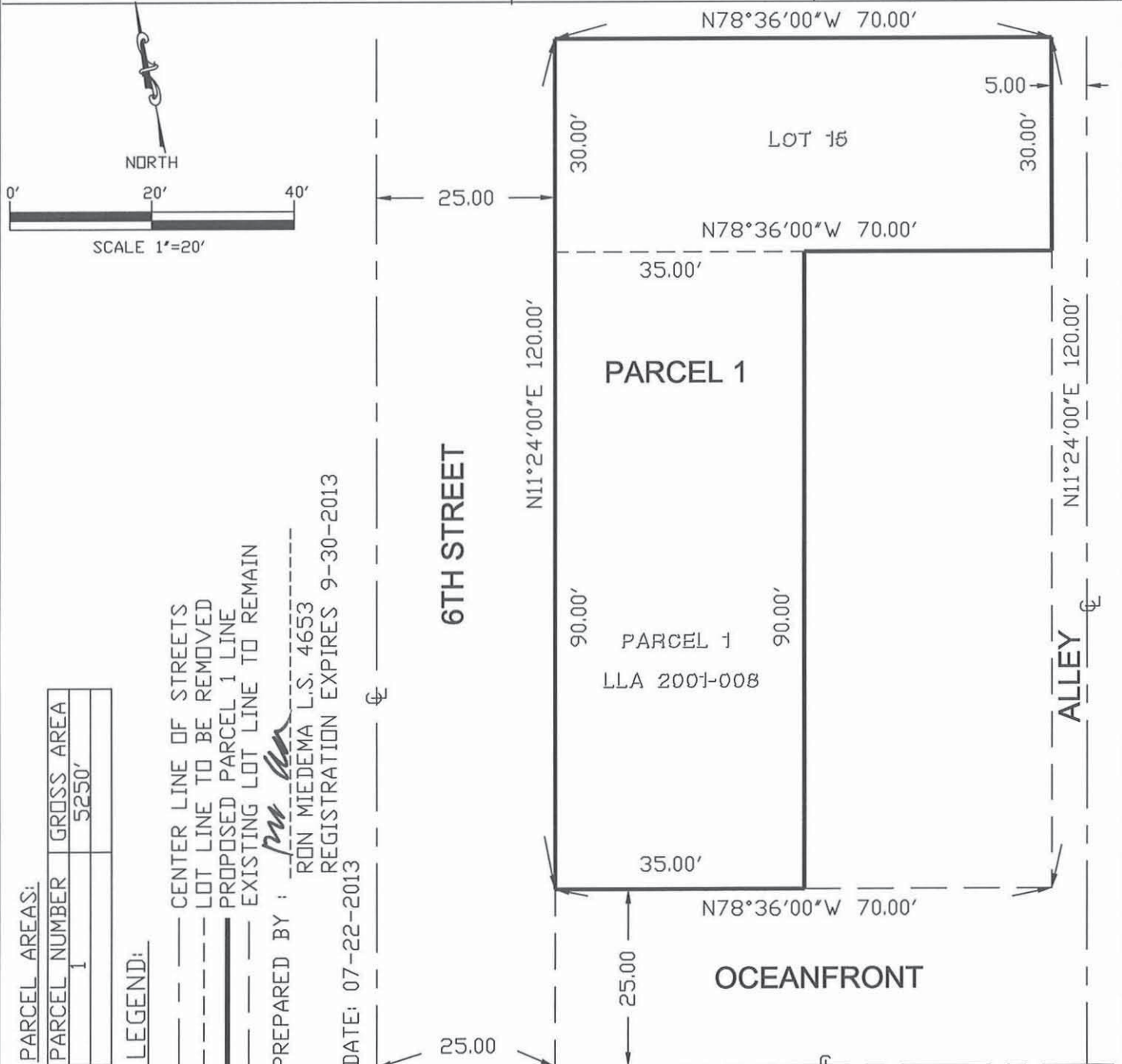
# EXHIBIT "B"

## CITY OF NEWPORT BEACH

### LOT LINE ADJUSTMENT L.A. 2013- (MAP)

SHEET 2 OF 3

OWNER	EXISTING PARCELS AP NUMBER	PROPOSED PARCELS REFERENCE NUMBER
MORGAN W. DAVIS AND SANDRA L. DAVIS, TRUSTEES OF THE DAVIS FAMILY TRUST	048-073-02	PARCEL 1
	048-073-29	PARCEL 1



SHEET 3 OF 3

[illegible]

PARCEL AREAS:	
PARCEL NUMBER	GROSS AREA
1	5250'

LEGEND:

\_\_\_\_\_ CENTER LINE OF STREETS  
 \_\_\_\_\_ LOT LINE TO BE REMOVED  
 \_\_\_\_\_ PROPOSED PARCEL 1 LINE  
 \_\_\_\_\_ EXISTING LOT LINE TO REMAIN

PREPARED BY : 15 bar

RON MIEDEMA L.S. 4653

REGISTRATION EXPIRES 9-30-2013

DATE: 07-22-2013

6TH STREET

# OCEANFRONT

## ALLEY

## **Attachment No. PC 4**

Correspondence Received



Norton Younglove  
514 W Ocean Front  
Newport Beach, Cal  
92661

RECEIVED BY  
COMMUNITY  
OCT 24 2013  
DEVELOPMENT  
CITY OF NEWPORT BEACH

City of Newport Beach  
Community Development Department  
Planning Division 100 Civic Center Drive  
P.O. Box 1768  
Newport Beach, CA 92658

RE: Davis Lot Merger  
Project File No. PA2013-176  
Location 106 6th street and 524 W Oceanfront

The alley in back of 106 6th street is very narrow. The fence needs to be set back several feet. Currently it is very difficult to make the turn and the trash truck has to back our of the alley. This alley is the only access for the homes in this block. The other house on 6th street is set back adequately.

Thank you for solving a neighborhood problem.

Sincerely,

Norton Younglove

1/20/13 10:00 AM 10/24/13 10:00 AM

10/24/13 10:00 AM 10/24/13 10:00 AM  
10/24/13 10:00 AM 10/24/13 10:00 AM  
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10/24/13 10:00 AM 10/24/13 10:00 AM



**McClellan Harris III**  
**509 West Balboa Boulevard**  
**Newport Beach, California 92661**

---

22 October 2013

City of Newport Beach  
Community Development Department  
Planning Division, 100 Civic Center Drive  
P.O. Box 1768  
Newport Beach, CA 92658

RECEIVED BY  
COMMUNITY

OCT 24 2013

DEVELOPMENT  
CITY OF NEWPORT BEACH

RE: Davis Lot Merger - Location: 106 6<sup>th</sup> Street and 524 West Oceanfront  
Project File No. PA 2013-176  
Activity No LM2013-003

This letter is written to express my concerns that the City ensure that this project requires a setback if these two parcels are combined. Specifically, the alley-way access behind 6<sup>th</sup> Street is significantly impaired due existing structure at the property line. This parcel is the only one that currently has this issue as new construction in this area over the years has required the set back.

As currently situated, the lot construction at the property line significantly impairs local resident traffic. The existence of this one lot having construction at the property line (i) impairs adequate traffic access, (ii) requires that the garbage truck must back up twice to collect the refuse on Balboa Boulevard and 6<sup>th</sup> street, and (iii) often requires automobile traffic to take two attempts at making the turn due to the tight turning area imposed by the existing lot-line construction at 6<sup>th</sup> street. This situation does present an unsafe condition that could be ameliorated simply by requiring the set back on the lone 6<sup>th</sup> street property.

I would appreciate your mailing me staff report on this issue when available.

Sincerely,



McClellan Harris III

Joseph DeCarlo  
510 W. Oceanfront  
Newport Beach, CA 92661

October 16, 2013

City of Newport Beach  
Community Development Department  
Planning Division, 100 Civic Center Drive  
PO Box 1768  
Newport Beach, CA 92658



RE: Davis Lot Merger  
Project File No. PA 2013-176  
Location 106 6<sup>th</sup> St. and 524 W. Oceanfront  
Activity No. LM2013-003

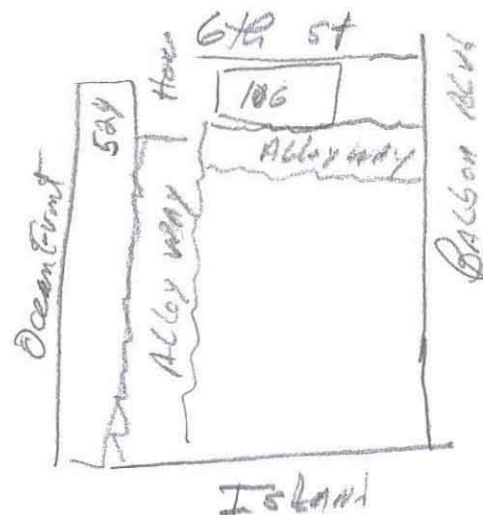
The alley in back of 106 6<sup>th</sup> Street is very narrow and their fence abuts the alley making it difficult to make the 90 degree turn that goes to Balboa Blvd. Other houses have set backs from alley but this one does not. There should be a set back from the alley if these two parcels are combined. This is a dangerous situation. Also, most cars and emergency vehicles have to back up and straighten out to transverse the turn in the alley. The trash truck cannot make turn and has to back all the way out of alley to the island and then go in off of Balboa Blvd. to pick up trash at 106 6<sup>th</sup> Street.

I will be out of town on October 24, 2013 and would like you to email me staff report prior to hearing.

Sincerely,

A handwritten signature in black ink, appearing to be "Joe DeCarlo".

Joseph DeCarlo, MBA, CPM, CCIM, CRE  
[ldmgt3@aol.com](mailto:ldmgt3@aol.com)







## **Attachment No. PC 5**

Lot Merger



EXHIBIT "A"  
CITY OF NEWPORT BEACH  
LOT LINE ADJUSTMENT L.A. 2013-  
(LEGAL DESCRIPTION)

SHEET 1 OF 3

OWNER	EXISTING PARCELS AP NUMBER	PROPOSED PARCELS REFERENCE NUMBER
MORGAN W. DAVIS AND SANDRA L. DAVIS, TRUSTEES OF THE DAVIS FAMILY TRUST	048-073-02	PARCEL 1
	048-073-29	PARCEL 1

PARCEL 1:

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOT 15 IN BLOCK 10 OF EAST NEWPORT, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON MAP RECORDED IN BOOK 3, PAGE 37 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

TOGETHER WITH:

TOGETHER WITH PARCEL 1 OF LOT LINE ADJUSTMENT NUMBER 2001-008  
AS PER DOCUMENT RECORDED AS INSTRUMENT NUMBER 20020811323  
IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CA.



PREPARED BY :

*Ron Miedema*

RON MIEDEMA L.S. 4653  
REGISTRATION EXPIRES 9-30-2013

DATE: 07-22-2013

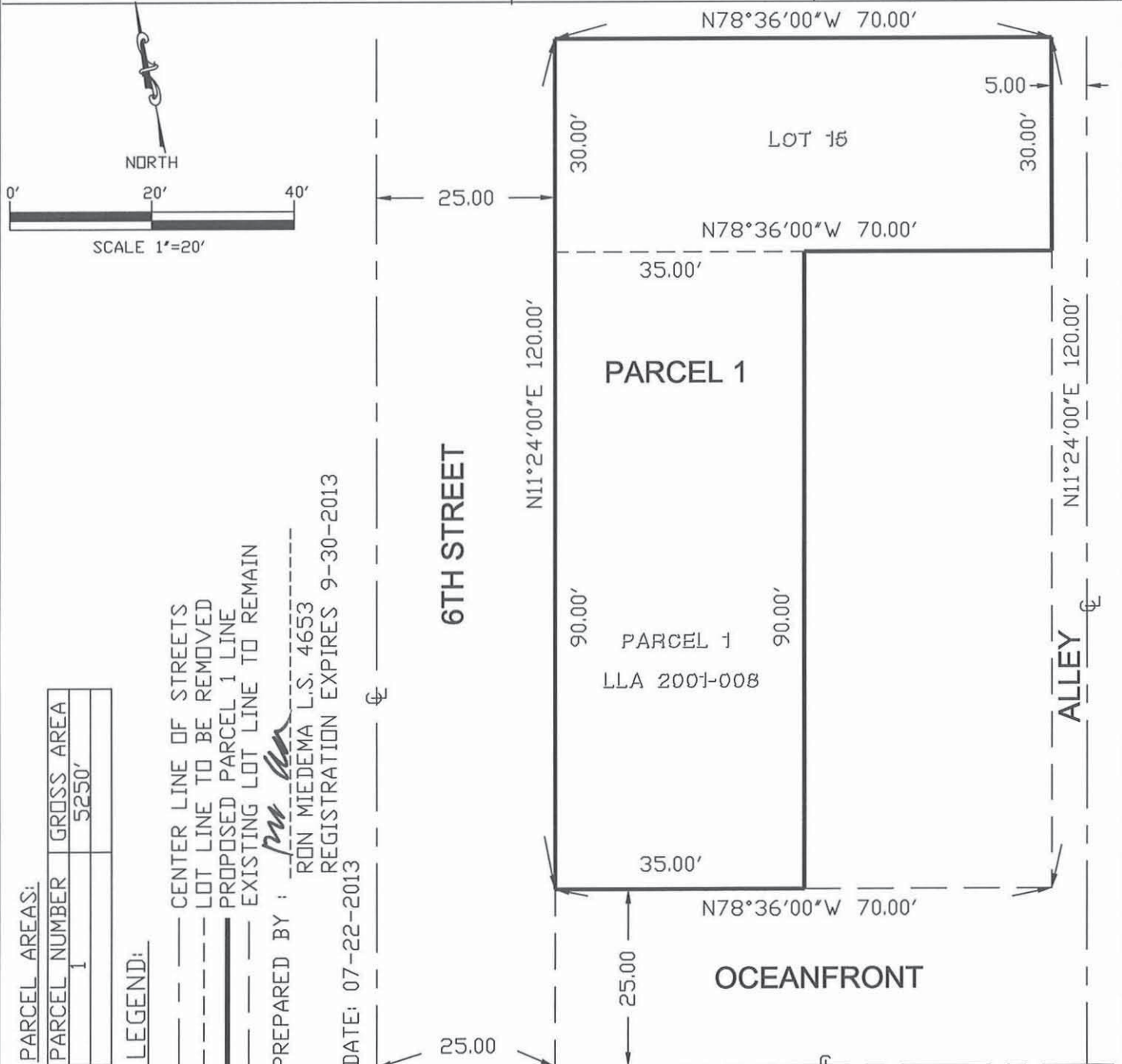
# EXHIBIT "B"

## CITY OF NEWPORT BEACH

### LOT LINE ADJUSTMENT L.A. 2013- (MAP)

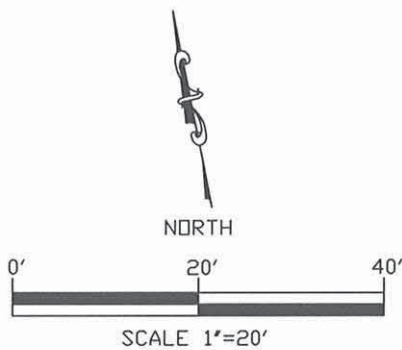
SHEET 2 OF 3

OWNER	EXISTING PARCELS AP NUMBER	PROPOSED PARCELS REFERENCE NUMBER
MORGAN W. DAVIS AND SANDRA L. DAVIS, TRUSTEES OF THE DAVIS FAMILY TRUST	048-073-02	PARCEL 1
	048-073-29	PARCEL 1



SHEET 3 OF 3

OWNER	EXISTING PARCELS	
	AP NUMBER	PROPOSED PARCELS REFERENCE NUMBER
MORGAN W. DAVIS AND SANDRA L. DAVIS, TRUSTEES OF THE DAVIS FAMILY TRUST	048-073-02	PARCEL 1
	048-073-29	PARCEL 1



PARCEL AREAS:	
PARCEL NUMBER	GROSS AREA
1	5250'

**LEGEND:**

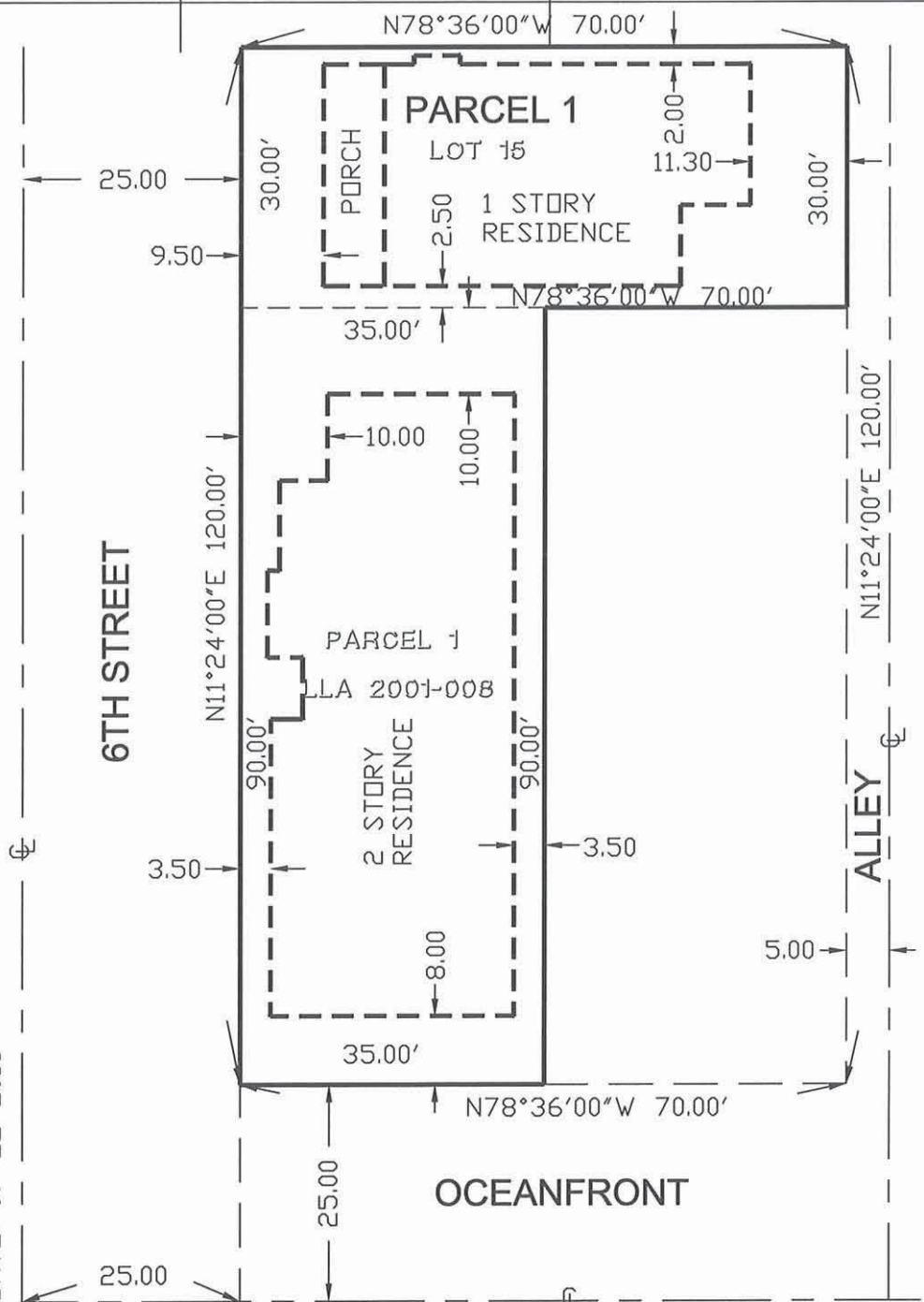
— — — — — CENTER LINE OF STREETS  
— — — — — LOT LINE TO BE REMOVED  
— — — — — PROPOSED PARCEL 1 LINE  
— — — — — EXISTING LOT LINE TO REMAIN

PREPARED BY : Syazreen

RON MIEDMA L.S. 4653

REGISTRATION EXPIRES 9-30-2013

DATE: 07-22-2013



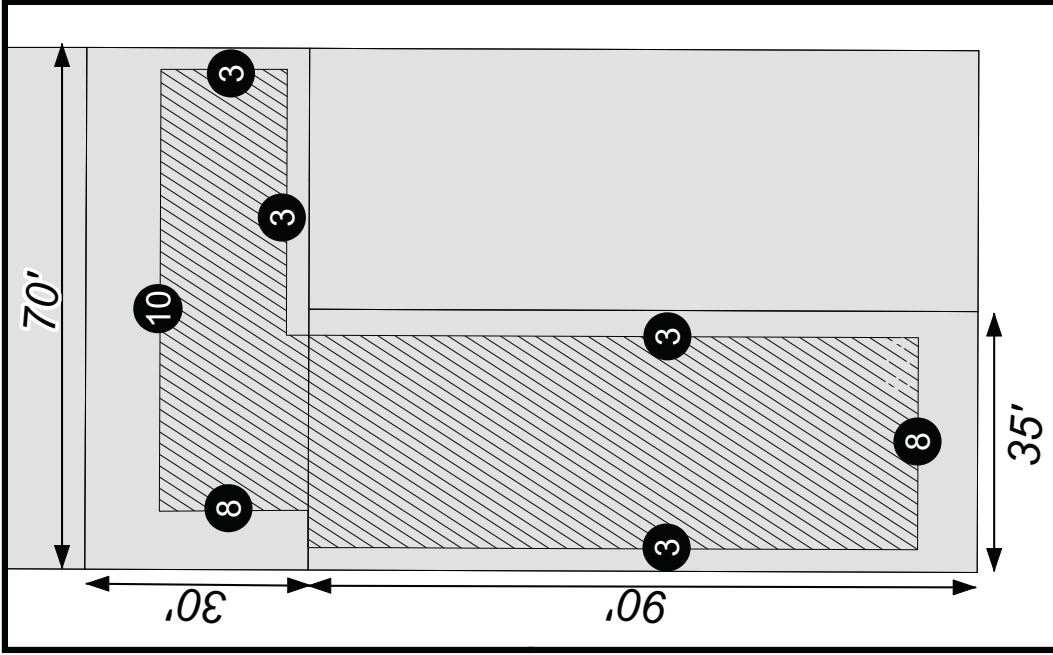


## **Attachment No. PC 6**

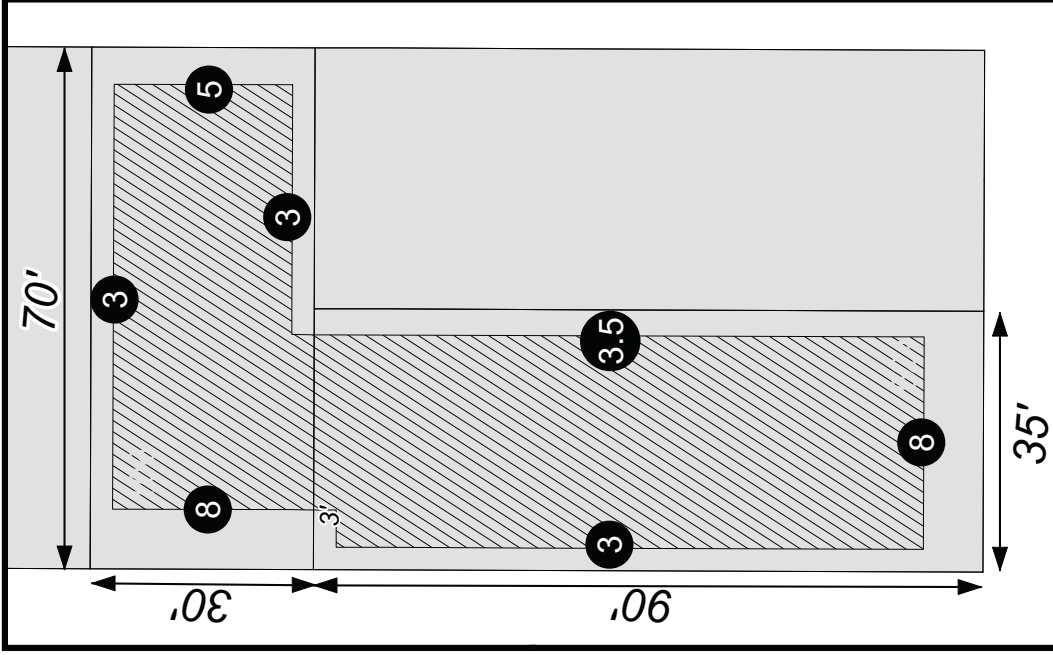
Setback Comparison



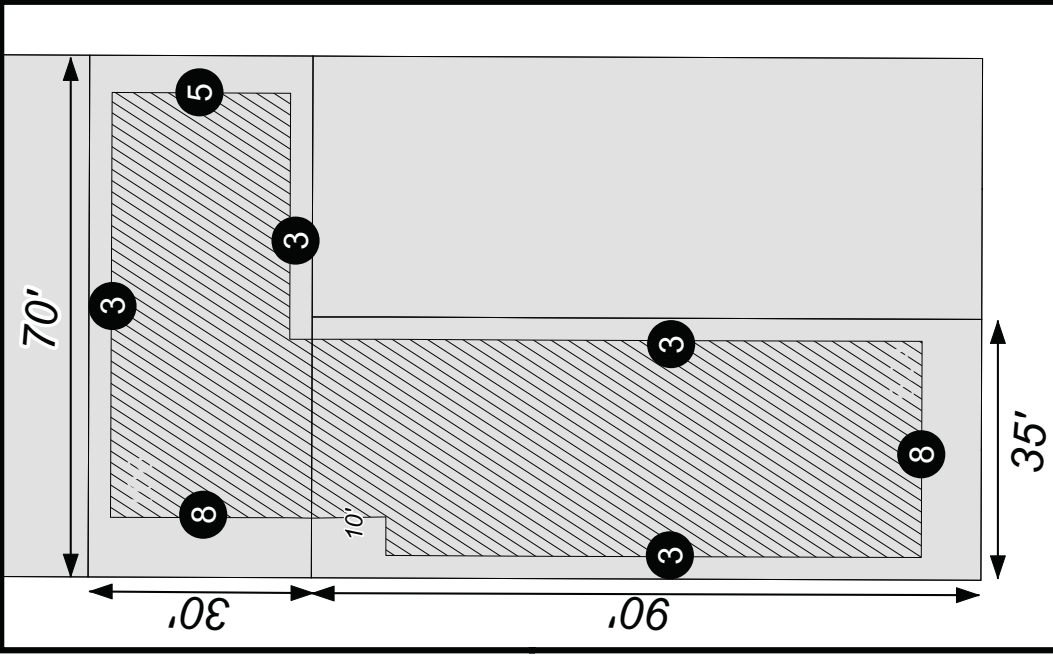




Default Setbacks



Proposed Setbacks



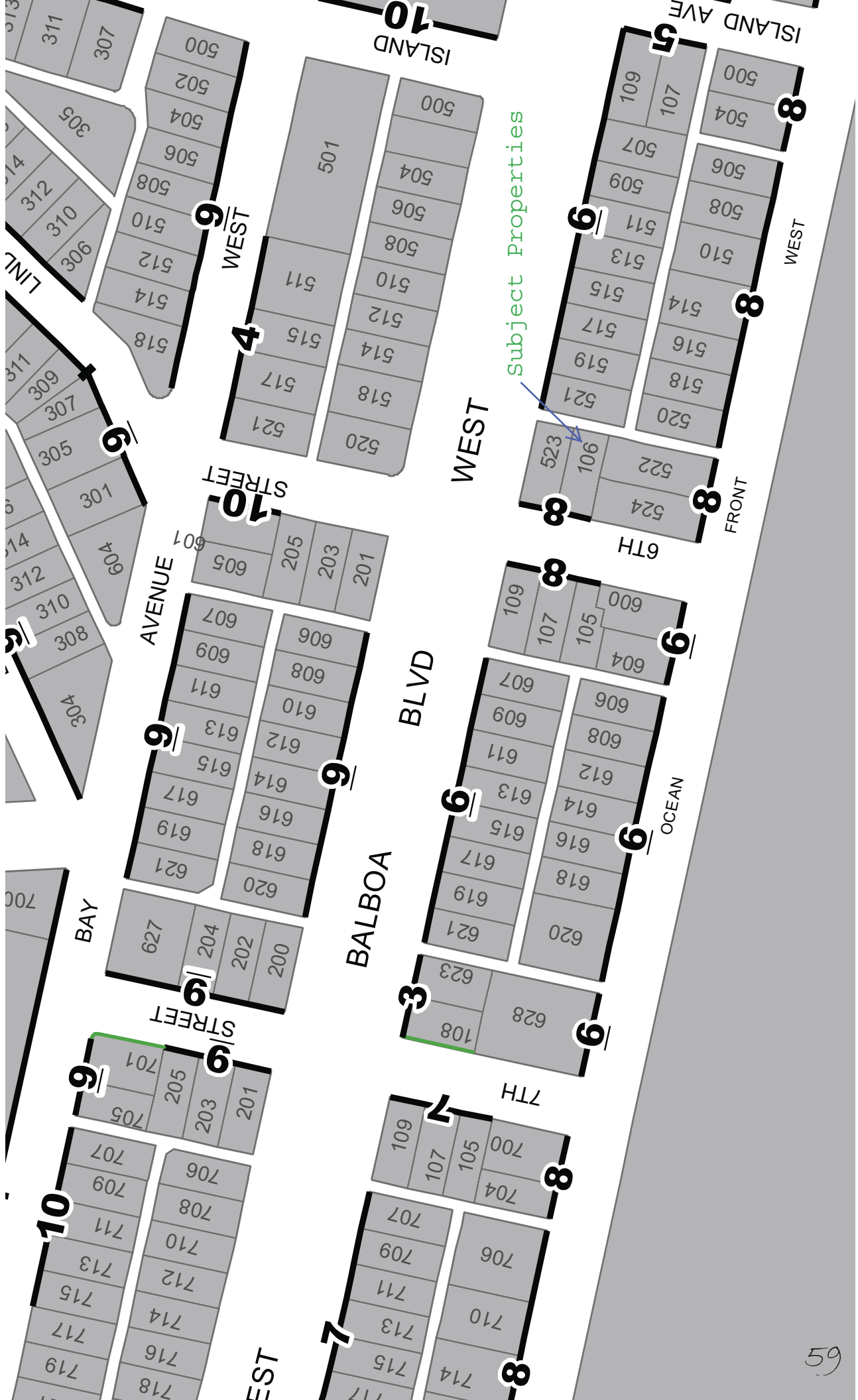
Staff Recommendation



## **Attachment No. PC 7**

Setback Map S-2E (excerpt)





**CITY OF NEWPORT BEACH  
PLANNING COMMISSION STAFF REPORT**

November 21, 2013

Agenda Item 3

**SUBJECT:** Miramar Drive Code Amendment - (PA2013-211)  
2022, 2026, 2032, 2034, 2038, and 2042 Miramar Drive  
▪ Code Amendment No. CA2013-006

**APPLICANT:** City of Newport Beach

**PLANNER:** Jaime Murillo, Senior Planner  
(949) 644-3209, [jmurillo@newportbeachca.gov](mailto:jmurillo@newportbeachca.gov)

---

**PROJECT SUMMARY**

A Zoning Code Amendment to change the rear alley setback for six properties from 6 feet to 0 feet, consistent with the standard rear alley setback for other properties in the City when located adjacent to a minimum 20-foot-wide alley.

**RECOMMENDATION**

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. \_\_\_\_ approving Code Amendment No. CA2013-006 (Attachment No. PC 1).

**INTRODUCTION**

Project Setting

The subject amendment affects six properties located on the Balboa Peninsula that abut a 30-foot-wide alley. The lots are zoned Single-Unit Residential (R-1), which is intended to provide for detached single-family residential dwelling units. Four of the six lots are interior lots and measure approximately 35 feet wide by 70 feet deep, resulting in a lot area of approximately 2,450 square feet. The remaining two lots are on the corners and measure approximately 40 feet wide by 70 feet deep, resulting in a lot area of approximately 2,800 square feet.



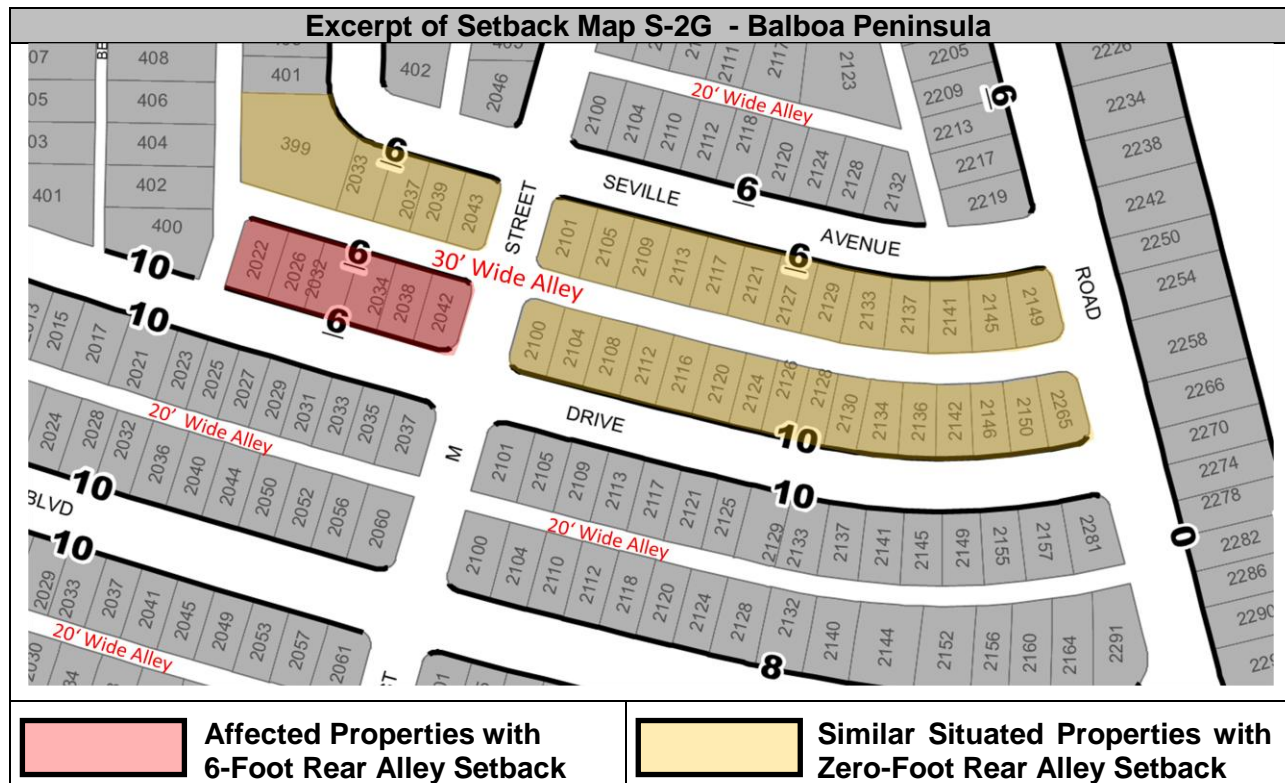
LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Single-Unit Residential Detached (RS-D)	Single-Unit Residential (R-1)	Single-Unit Dwellings
SURROUNDING	RS-D	R-1	Single-Unit Dwellings



### Background & Project Description

The standard rear setback for properties zoned R-1 abutting a minimum 20-foot-wide alley is 0 feet per the Zoning Code, unless a different distance is depicted on a setback map. In the case of the subject six properties, the setback map (Attachment No. PC 2: Setback Map S-2G) indicates a 6-foot-rear alley setback. This is unusual when compared to other lots in the vicinity of this block that abut 20- and 30-foot-wide alleys, which all have the standard 0-foot setback.

This discrepancy was brought to staff's attention by a property owner that intends to construct a new home at 2042 Miramar Drive. The proposed amendment would eliminate the 6-foot rear alley setback identified on the Setback Map S2-G, allowing the subject lots to maintain the standard 0-foot rear alley setback. The City Council initiated the amendment on October 22, 2013.



## **DISCUSSION**

### **Analysis**

#### *Purpose of Rear Setback*

The Zoning Code establishes different rear setbacks for lots abutting an alley, based on the width of the alley, to accommodate increased vehicular maneuverability through the alley ways:

<b>Table 1 – Typical Alley Setbacks</b>	
<b>Alley Width</b>	<b>Rear Setback</b>
15' or less	5' setback
15'11" to 19'11"	3'9" setback
20' or more	0' setback

Staff has been unable to determine exactly when or why the 6-foot setback was applied to these six lots; however, it appears to have been established in conjunction with the adoption of the 1950 Zoning Code. The setback map contained within the 1943 Zoning Code does not illustrate a required rear setback, but the 6-foot rear setback appears in the 1950 Zoning Code setback map (Attachment No. PC 3).

No other block in the vicinity that abuts a 20- or 30-foot wide alley is required to provide a rear setback. Since the subject lots abut a 30-foot wide alley, a 0-foot rear setback will not impact vehicular maneuverability and would be consistent with other lots in the vicinity.

#### *Existing Encroachments into 6-Foot Rear Setback*

One of the six lots maintains the minimum 6-foot-setback; all other lots are either non-conforming or were granted a discretionary approval to deviate from the setback. Table 2 illustrates the existing encroachments and the approvals that were granted for each of the lots within the block.

<b>Table 2 - Existing Encroachments Into 6-Foot Rear Alley Setback</b>			
<b>Address</b>	<b>Discretionary Approval</b>	<b>Date Granted</b>	<b>Allowed Setback</b>
2022 Miramar Dr	Modification Permit No. 2707	8/11/81	4 feet (2-foot encroachment)
2026 Miramar Dr	Modification Permit No. 2661	2/5/81	2 feet (4-foot encroachment)
2032 Miramar Dr	Modification Permit No. 350	6/22/71	0 feet (6-foot encroachment)
2034 Miramar Dr	Use Permit No. 610	4/21/60	2 feet (4-foot encroachment)
2038 Miramar Dr	None (existing nonconforming)	-	2 feet based on survey (4-foot encroachment)
2042 Miramar Dr	None (existing complies)	-	6 feet

### *Resulting Floor Area Changes*

The required 6-foot setback not only affects building placement, but also impacts buildable area and ultimately the maximum size of a home on the property. The maximum size of a home (gross floor area) that can be constructed on a lot is established by a factor of two times the buildable area of a lot. The buildable area is the lot area minus setbacks. A comparison of the existing and proposed buildable areas and resulting floor area limits of the typical 35-foot-wide x 70-foot-deep lots that are prevalent in the project area are illustrated in Table 3.

<b>Table 3 - Lot Comparisons</b>				
	<b>Existing Typical Subject Lot</b>	<b>Proposed Typical Subject Lot</b>	<b>Adjacent Typical Lot w/ 10' Front Setback</b>	<b>Adjacent Typical Lot w/ 6' Front Setback</b>
<b>Approximate Lot Size</b>	2,450 sf (35' x 70')	2,450 sf (35' x 70')	2,450 sf (35' x 70')	2,450 sf (35' x 70')
<b>Setbacks</b>				
<b>Front</b>	6'	6'	10'	6'
<b>Sides</b>	3'	3'	3'	3'
<b>Rear</b>	6'	0'	0'	0'
<b>Buildable Area</b>	1,682 sf	1,856 sf	1,740 sf	1,856 sf
<b>Maximum Gross Floor Area (2 x Buildable)</b>	3,364 sf	3,712 sf	3,480 sf	3,712 sf

As illustrated in Table 3, removing the 6-foot rear alley setback for the subject lots would result in a buildable area and allowable floor area that is consistent with other lots in the vicinity.

### Summary

Staff believes amending the setback map to eliminate the 6-foot-rear alley setback is appropriate to correct the inequity. As illustrated by the preceding analysis, no other block in the vicinity that abuts a 20- or 30-foot wide alley is required to provide a rear setback. Changing the rear setback to the standard 0-foot requirement would not result in significant change to the existing development pattern of the neighborhood since a majority of the existing homes in the block already encroach into the 6-foot rear setback area. Lastly, changing the setback would result in a buildable area and allowable floor area that is consistent with other lots in the vicinity.

### Alternatives

The Planning Commission has the option to recommend denial of the amendment or recommend a different rear alley setback for the subject six lots.

### Environmental Review

This item is categorically exempt under Section 15305, of the California Environmental Quality Act (CEQA) Guidelines – Class 5 (Minor Alterations in Land Use Limitations). The Class 5 exemption allows minor alterations in land use limitations in areas with an average slope of less than 20 percent and which do not result in any changes in land use or density. In this case, the six lots affected by the amendment have an average slope of less than 20 percent; the amendment will not change the land use category or zoning district of the affected lots; and the maximum number of dwelling units per lot will not change.

### Public Notice

Notice of this proposed amendment was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:



Jaime Murillo, Senior Planner

Submitted by:



Brenda Wisneski, AICP, Deputy Director

### **ATTACHMENTS**

- PC 1 Draft Resolution Recommending Approval
- PC 2 Setback Map S-2G
- PC 3 1943 and 1950 Setback Maps

# **Attachment No. PC 1**

Draft Resolution Recommending  
Approval



## **RESOLUTION NO. \_\_\_\_**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING CITY COUNCIL ADOPTION OF ZONING CODE AMENDMENT NO. CA2013-006 TO CHANGE THE REAR ALLEY SETBACK FROM 6 FEET TO 0 FEET FOR SIX PROPERTIES ON MIRAMAR DRIVE (PA2013-211)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### **SECTION 1. STATEMENT OF FACTS.**

1. On October 22, 2013, the City Council initiated an amendment of the Zoning Code that would change the rear alley setback for six properties from 6 feet to 0 feet, consistent with the standard rear alley setback for other properties in the City when located adjacent to a 20-foot-wide alley. The six properties affected by this amendment are 2022, 2026, 2032, 2034, 2038, and 2042 Miramar Drive.
2. The Planning Commission conducted a public hearing on November 21, 2013, in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

#### **SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.**

The code amendment is categorically exempt under Section 15305, of the California Environmental Quality Act (CEQA) Guidelines – Class 5 (Minor Alterations in Land Use Limitations) because the lots affected by the amendment have an average slope of less than 20 percent; the amendment will not change the land use category or zoning district of the affected lots; and the maximum number of dwelling units per lot will not change.

#### **SECTION 3. FINDINGS.**

1. The Zoning Code establishes different rear setbacks for lots abutting an alley, based on the width of the alley, to accommodate increased vehicular maneuverability through the alley ways. The standard rear setback for properties abutting a minimum 20-foot-wide alley is 0 feet. Aside from the subject block of six lots, no other block in the vicinity that abuts a 20- or 30-foot wide alley is required to provide a rear setback. Since the subject lots abut a 30-foot wide alley, a 0-foot rear setback will not impact in vehicular maneuverability and would be consistent with other lots in the vicinity.
2. Changing the rear setback to the standard 0-foot requirement would not result in significant change to the existing development pattern of the neighborhood since a majority of the existing homes in the block already encroach into the 6-foot rear setback area.

3. Changing the setback from rear setback from 6 feet to 0 feet would result in a buildable area and allowable floor area that is consistent with other lots in the vicinity.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby recommends approval of Code Amendment No. CA2013-006 changing the rear alley setback from 6 feet to 0 feet for the subject six properties on Setback Map S-2G as set forth in Exhibit "A."

**PASSED, APPROVED AND ADOPTED THIS 21st DAY OF NOVEMBER, 2013.**

AYES:

NOES:

ABSTAIN:

ABSENT:

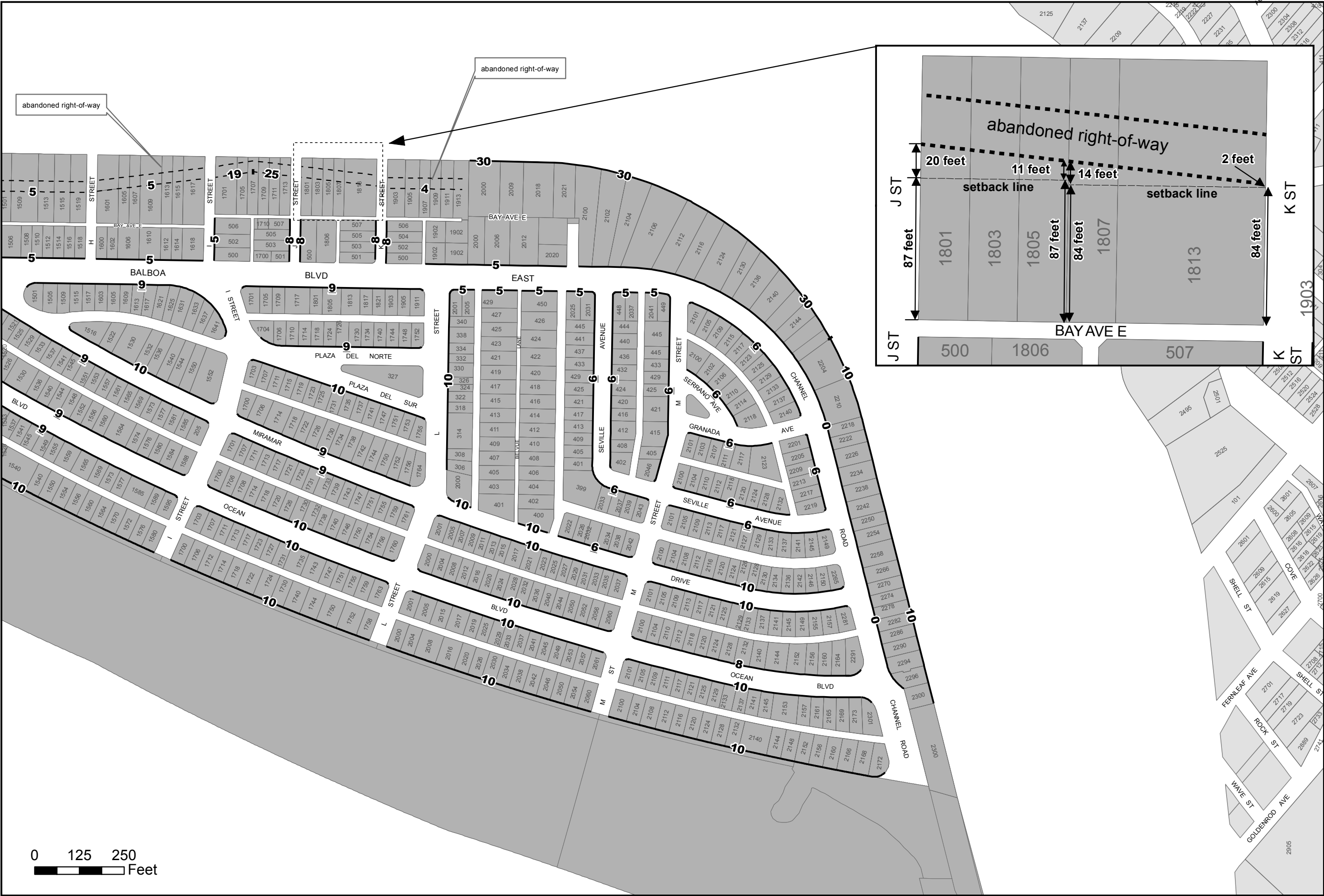
BY: \_\_\_\_\_  
Bradley Hillgren, Chairman

BY: \_\_\_\_\_  
Kori Kramer, Secretary



# EXHIBIT A





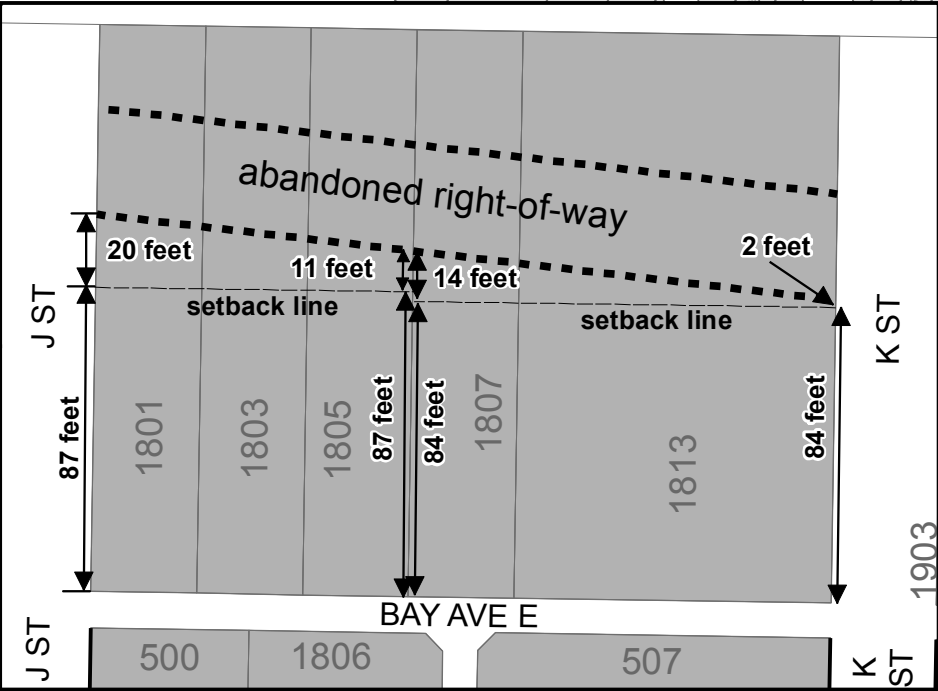
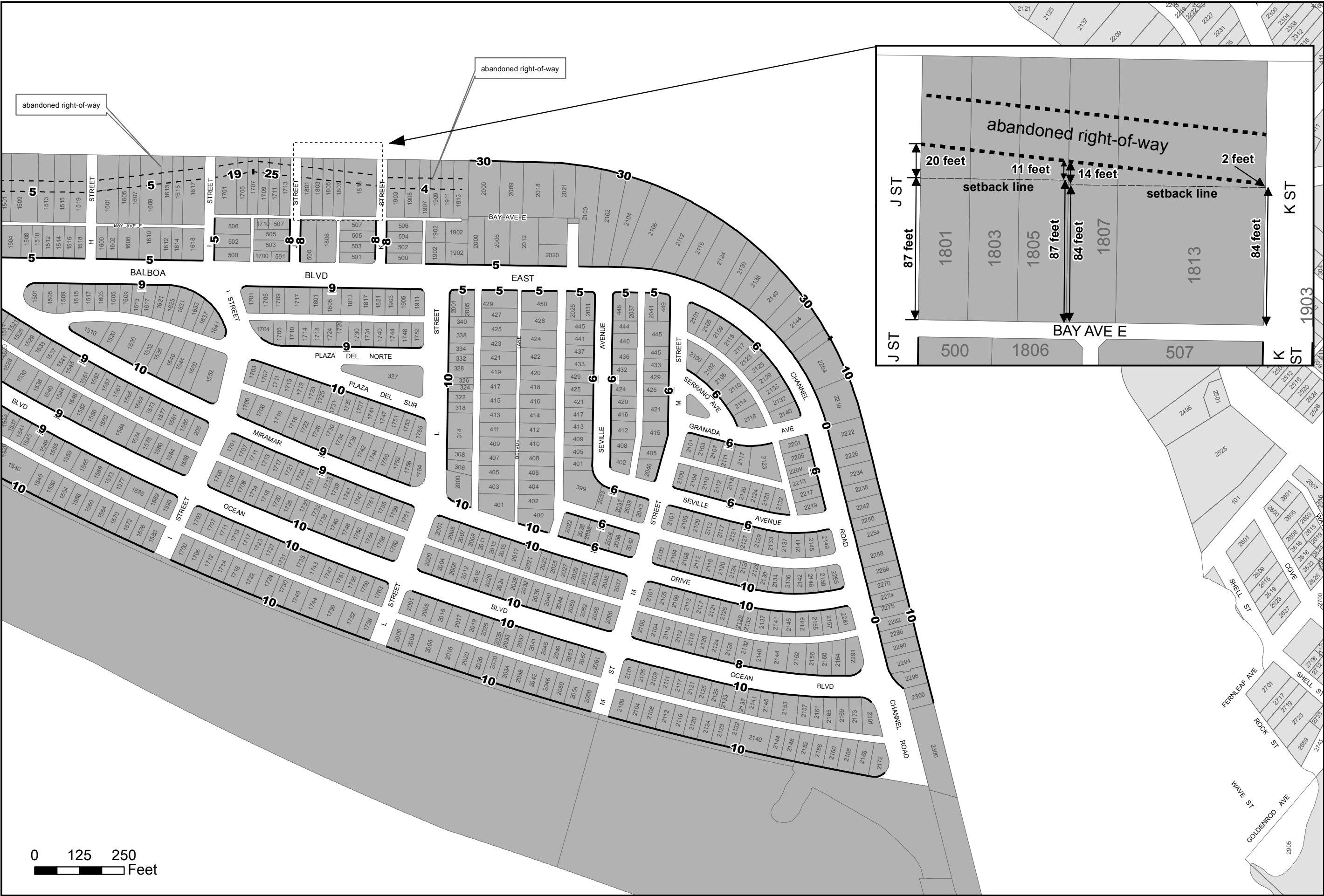
Name: S-2G / October 26, 2010



# **Attachment No. PC 2**

Setback Map S-2G





Setback Map

S-2G - Balboa Peninsula

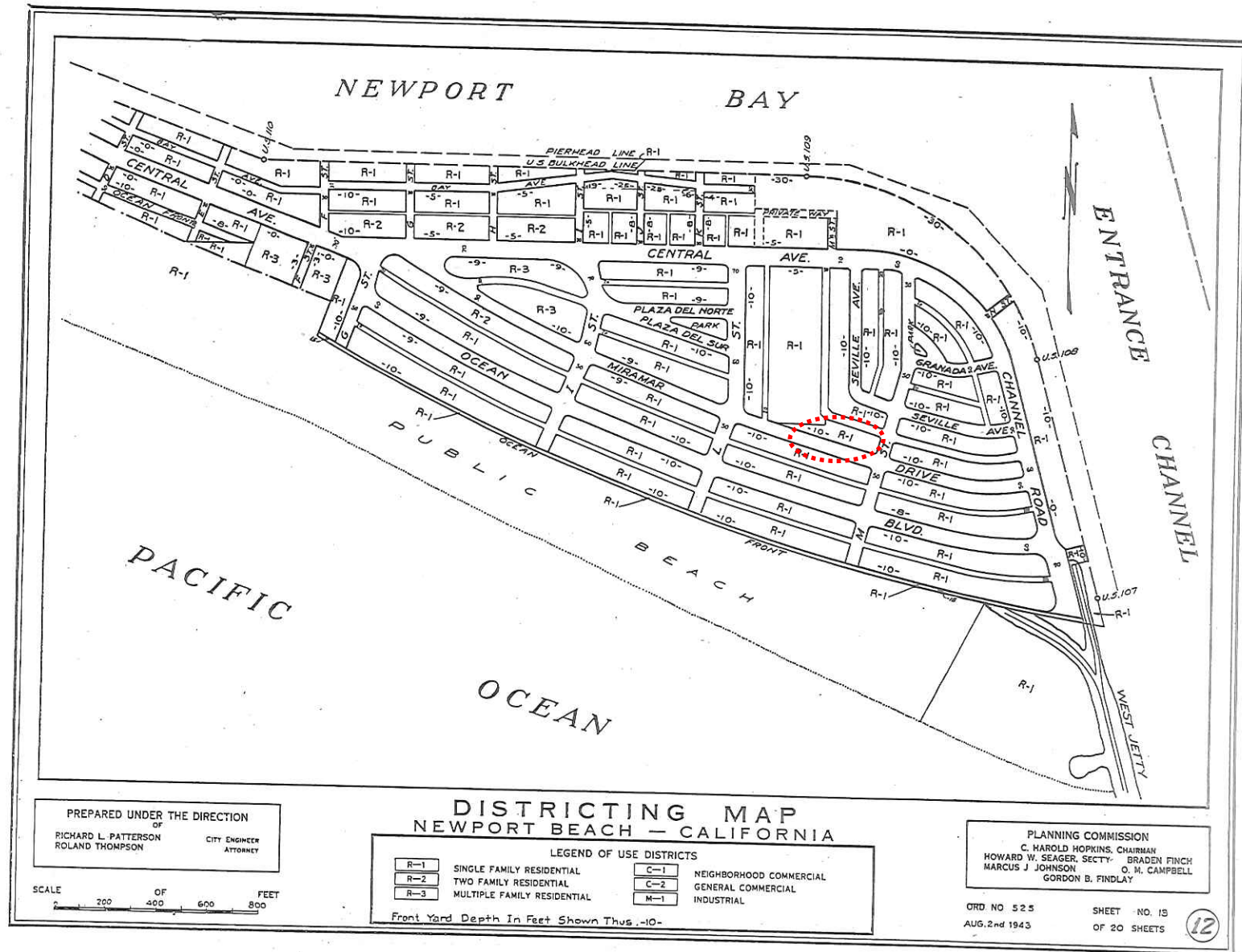




# **Attachment No. PC 3**

1944 and 1950 Setback Maps









**CITY OF NEWPORT BEACH  
PLANNING COMMISSION STAFF REPORT**

November 21, 2013

Agenda Item No. 4

**SUBJECT:** Wireless Telecommunications Facilities Ordinance Update (PA2012-057)  
• Code Amendment No. CA2012-004

**PLANNER:** James Campbell, Principal Planner  
(949) 644-3210, [jcampbell@newportbeachca.gov](mailto:jcampbell@newportbeachca.gov)

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**PROJECT SUMMARY**

An amendment to the Newport Beach Municipal Code (“NBMC”) to update regulations regarding wireless telecommunication facilities (“Telecom Facilities”). Regulations currently contained in Chapter 15.70 would be updated and relocated to Title 20 (Planning and Zoning) and Chapter 15.70 would be rescinded in its entirety.

**RECOMMENDED ACTION**

1. Conduct a public hearing; and
2. Adopt the attached resolution recommending City Council approval of the proposed update of the Wireless Telecommunication Ordinance (CA2012-004) (Attachment PC-1).

**DISCUSSION**

The amendment relocates telecom regulations from Title 15 (Building and Construction) to Title 20 (Zoning). The amendment will provide a balanced review process consistent with existing procedures provided within the Zoning Code. Proposed telecom facilities that are not visible will be permitted by the Zoning Clearance process. Proposed telecom facilities that would be visible, including proposed installations within the public right-of-way, will require a Minor Use Permit. A Conditional Use Permit will be required if a new free standing structure is proposed. The proposed amendment also does not increase the potential height of telecom facilities and does not allow them in areas where they are currently prohibited. The amendment includes development and screening standards to ensure that future telecom facilities are visually compatible with the community. Lastly, the proposed amendment includes provisions reflective of state and federal law that require administrative review of minor modifications to, or the collocation of, existing telecom facilities.

The Planning Commission conducted two study sessions in 2012, and two recently, one on September 19, 2013, and the other on October 17, 2013. During the meetings, the Commission discussed the proposed update and provided direction to staff. Based on the dialog, staff updated the draft ordinance (Attachment PC-2) while making the following changes that were not previously discussed:

1. Changed the term “Antenna Class” to “Facility Class” (see Section 20.49.030(G) on page 8 of the draft resolution).

2. Included a provision to strongly discourage new lattice towers and monopoles. Staff included a statement that the preferred design for a monopole is where antennas are not visible (see Section 20.49.050(F)(4)(a) on page 13 of the draft resolution).
3. Included a provision to strongly discourage artificial trees or shrubbery since they cannot presently be made to resemble natural vegetation in a sufficiently believable and realistic fashion and such attempts to replicate nature in the wrong setting increase, rather than reduce, visual blight (see Section 20.49.050(F)(4)(d) on pages 13 and 14 of the draft resolution).
4. Eliminated the paragraph within the Radio Frequency "RF" compliance report section referring to an independent RF engineer to review the reports. Staff presently reviews the reports and does not foresee the need to hire an independent consulting engineer to review RF compliance reports (see Section 20.49.100 on pages 19 and 20 of the draft resolution).

## **ENVIRONMENTAL REVIEW**

This action is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15061(b)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. The revisions to the Zoning Ordinance do not authorize any development, and therefore, will not result in a change to the physical environment. Individual wireless telecommunications facilities are subject to CEQA review at the time of application review.

## **NOTICE**

Notice of this amendment was published in the Daily Pilot, including an eighth page advertisement, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website and a notice of this item was mailed to the community associations of Balboa Island, Balboa Peninsula, Corona del Mar, Lido Isle, and West Newport.

Prepared by:

Submitted by:

  
James Campbell, Principal Planner

  
Brenda Wisneski, AICP, Deputy Director

## **Attachments**

- PC-1 Draft Resolution with Updated Regulations
- PC-2 Update of draft Chapter 20.49 with marked changes

# **ATTACHMENT PC-1**

**Draft Resolution**



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## **RESOLUTION NO. #####**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING CITY COUNCIL ADOPTION OF CODE AMENDMENT NO. CA2012-004 RELATED TO THE REGULATION OF WIRELESS TELECOMMUNICATIONS FACILITIES (PA2012-057)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### **SECTION 1. STATEMENT OF FACTS.**

1. On March 27, 2012, the City Council initiated an amendment of the Municipal Code to comprehensively update the City's wireless telecommunications facilities ordinance.
2. The Planning Commission conducted study sessions on July 19, 2012, September 6, 2012, September 19, 2013, and October 17, 2013, where potential changes to the ordinance were discussed.
3. A public hearing was held on November 21, 2013, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

#### **SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.**

This action is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15061(b)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. The revisions to the Zoning Ordinance do not authorize any development, and therefore, will not result in a change to the physical environment. Individual wireless telecommunications facilities are subject to CEQA review at the time of application review.

#### **SECTION 3. FINDINGS.**

1. The proposed amendment will provide a balanced review process consistent with existing procedures provided within the Zoning Code (Title 20). Proposed telecom facilities that are not visible will be permitted by the Zoning Clearance process. Proposed telecom facilities that would be visible will be subject to either a Minor Use Permit or a Conditional Use Permit if a new free standing structure were proposed.
2. The proposed amendment does not increase the potential height of telecom facilities and does not allow them in areas where they are currently prohibited.
3. The proposed amendment includes adequate development and screening standards to ensure that future telecom facilities are visually compatible with the community.

4. The proposed amendment includes provisions reflective of State and federal law that require administrative review of minor modifications to, or the collocation of, existing telecom facilities.

**NOW, THEREFORE, BE IT RESOLVED:**

The Planning Commission of the City of Newport Beach hereby recommends approval of Code Amendment No. CA2012-004 as set forth in Exhibit "A."

**PASSED, APPROVED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2013.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Bradley Hillgren, Chairman

BY: \_\_\_\_\_  
Kory Kramer, Secretary

**EXHIBIT A****Code Amendment No. CA2012-004**

Section 1: Chapter 15.70 of the Newport Beach Municipal Code is hereby repealed.

Section 2: Table 2-1 within Section 20.18.020 (Residential Zoning Districts Land Uses and Permit Requirements) of the Newport Beach Municipal Code regarding Wireless Telecommunications Facilities is hereby amended to read as follows with all other provisions contained within Table 2-1 remaining unchanged:

	<b>R-A</b>	<b>R-1</b>	<b>R-BI R-2</b>	<b>RM RMD</b>	<b>Specific Use Regulations</b>
Wireless Telecommunication Facilities	—	—	—	MUP/CUP/LTP	Chapter 20.49

Section 3: Table 2-4 within Section 20.20.020 (Commercial Zoning Districts Land Uses and Permit Requirements) of the Newport Beach Municipal Code regarding Wireless Telecommunications Facilities is hereby amended as follows with all other provisions contained within Table 2-4 remaining unchanged:

	<b>OA</b>	<b>OG</b>	<b>OM</b>	<b>OR</b>	<b>Specific Use Regulations</b>
Wireless Telecommunication Facilities	CUP/MUP/ LTP	CUP/MUP/ LTP	CUP/MUP/ LTP	CUP/MUP/ LTP	Chapter 20.49

Section 4: Table 2-5 within Section 20.20.020 (Commercial Zoning Districts Land Uses and Permit Requirements) of the Newport Beach Municipal Code regarding Wireless Telecommunications Facilities is hereby amended to read as follows with all other provisions contained within Table 2-5 remaining unchanged:

	<b>CC</b>	<b>CG</b>	<b>CM</b>	<b>CN</b>	<b>CV</b>	<b>Specific Use Regulations</b>
Wireless Telecommunication Facilities	CUP/MUP/ LTP	CUP/MUP/ LTP	CUP/MUP/ LTP	CUP/MUP/ LTP	CUP/MUP/ LTP	Chapter 20.49

Section 4: Table 2-8 within Section 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements) of the Newport Beach Municipal Code regarding Wireless Telecommunications Facilities is hereby amended to read as follows with all other provisions of Section 20.22.020 remaining unchanged:

	<b>MU-V</b>	<b>MU-MM (6)</b>	<b>MU-DW</b>	<b>MU-CV/15th St. (7)</b>	<b>Specific Use Regulations</b>
Wireless Telecommunication Facilities	CUP/MUP/LTP	CUP/MUP/LTP	CUP/MUP/LTP	CUP/MUP/LTP	Chapter 20.49

Section 5: Table 2-9 within Section 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements) of the Newport Beach Municipal Code regarding Wireless Telecommunications Facilities is hereby amended to read as follows with all other provisions of Section 20.22.020 remaining unchanged:

	<b>MU-W1 (5)(6)</b>	<b>MU-W2</b>	<b>Specific Use Regulations</b>
Wireless Telecommunication Facilities	CUP/MUP/LTP	CUP/MUP/LTP	Chapter 20.49

Section 5: Table 2-12 within Section 20.24.020 (Industrial Zoning Districts Land Uses and Permit Requirements) of the Newport Beach Municipal Code regarding Wireless Telecommunications Facilities is hereby amended to read as follows with all other provisions of Section 20.24.020 remaining unchanged:

	<b>IG</b>	<b>Specific Use Regulations</b>
Wireless Telecommunication Facilities	CUP/MUP/LTP	Chapter 20.49

Section 6: Table 2-14 within Section 20.26.020 (Special Purpose Zoning Districts Land Uses and Permit Requirements) of the Newport Beach Municipal Code regarding Wireless Telecommunications Facilities is hereby amended to read as follows with all other provisions of Section 20.26.020 remaining unchanged:

	<b>OS</b>	<b>PF</b>	<b>PI</b>	<b>PR</b>	<b>Specific Use Regulations</b>
Wireless Telecommunication Facilities	CUP/MUP/LTP	CUP/MUP/LTP	CUP/MUP/LTP	CUP/MUP/LTP	Chapter 20.49

Section 7: Chapter 20.49 (Wireless Telecommunication Facilities) of the Newport Beach Municipal Code as is hereby approved as shall read as follows.

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**Chapter 20.49 – Wireless Telecommunications Facilities**

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**Sections**

- 20.49.010 – Purpose**
  - 20.49.020 – Effect of Chapter**
  - 20.49.030 – Definitions**
  - 20.49.040 – Telecom Facility Preferences and Prohibited Locations**
  - 20.49.050 – General Development and Design Standards**
  - 20.49.060 – Permit Review Procedures**
  - 20.49.070 – Permit Implementation, Time Limits, Duration, and Appeals**
  - 20.49.080 – Agreement for Use of City-owned or City-held Trust Property**
  - 20.49.090 – Modification and Collocation of Existing Telecom Facilities**
  - 20.49.100 – Operational and Radio Frequency Compliance and Emissions Report**
  - 20.49.110 – Right to Review, Revoke or Modify a Permit**
  - 20.49.120 – Removal of Telecom Facilities**
- 

**20.49.010 – Purpose**

- A. The purpose of this Chapter is to provide for the installation, modification, operation and maintenance of wireless telecommunication facilities (“Telecom Facilities”) on public and private property consistent with State and federal law while ensuring public safety, reducing the visual effects of Telecom Facilities on public streetscapes, protecting public views, and otherwise avoiding and mitigating the visual impacts of Telecom Facilities on the community.
- B. Telecom Facilities shall utilize the least obtrusive available technology in order to reduce or minimize the number of Telecom Facilities in the City and thereby reduce their visual impact on the community.
- C. The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This Chapter shall be applied to providers, operators, and maintainers of wireless services regardless of whether authorized by State or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.

**20.49.020 – Effect of Chapter**

- A. Regulatory Scope. These regulations are applicable to all Telecom Facilities providing wireless voice and/or data transmission such as, but not limited to, cell phone, internet, and radio relay stations.

- B. Permit and/or Agreement Required. Prior to construction or modification of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), Limited Term Permit (LTP), or Zoning Clearance (ZC) in accordance with Section 20.49.060 (Permit Review Procedures). Applicants who obtain a MUP, CUP, LTP, or ZC (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust property, shall enter into an agreement prepared and executed by the City Manager or its designee prior to construction of the Facility, consistent with Section 20.49.080 (Agreement for Use of City-owned or City-held Trust Property).
- C. Exempt Facilities. The following types of facilities are exempt from the provisions of this Chapter:
1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).
  2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices (“OTARD”) rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.
  3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.
  4. Facilities exempt from some or all of the provisions of this Chapter by operation of State or federal law to the extent so determined by the City.
  5. Systems installed or operated at the direction of the City or its contractor.
  6. Systems installed entirely within buildings for the sole purpose of providing wireless telecommunications or data transmission services to building occupants.
- D. Other Regulations. Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:
1. Rules, regulations, policies, or conditions in any permit, license, or agreement issued by a local, state or federal agency which has jurisdiction over the Telecom Facility.
  2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).
- E. Regulations not in Conflict or Preempted. All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter:
1. All applicable City design guidelines and standards.

2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.

- F. Legal Nonconforming Facility. Any Telecom Facility that was lawfully constructed, erected, or approved prior to *[INSERT EFFECTIVE DATE OF THIS CHAPTER]*, that is operating in compliance with all applicable laws, and which Facility does not conform to the requirements of this Chapter shall be accepted and allowed as a legal nonconforming Facility. Legal nonconforming Facilities shall comply at all times with the laws, ordinances, regulations, and any conditions of approval in effect at the time the Facility was approved, and any applicable federal and State laws as they may be amended or enacted, in the future.

#### **20.49.030 – Definitions**

For the purposes of this Chapter, the following definitions shall apply:

- A. Antenna. Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, Antennas, arrays, or other similar devices.
- B. Antenna Array. Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and Antenna support structure, all of which elements are deemed to be part of the Antenna.
- C. Base Station. Base Station means the electronic equipment and appurtenant Support Equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. A Base Station does not include the Antennas, Antenna support structure, or any portion of Distributed Antenna System (DAS).
- D. City-owned or City-held Trust Property. City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City's jurisdiction, including but not limited to City Hall, Police and Fire facilities, recreational facilities, parks, beaches, libraries, monuments, signs, streetlights and traffic control standards.
- E. Collocation. Collocation means an arrangement whereby multiple Telecom Facilities are installed on the same building or structure.
- F. Distributed Antenna System, DAS. Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a "hub" or "hotel" where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.



- G. Facility Classes. Facility Classes are Telecom Facilities and the attendant Support Equipment separated into the following distinct classes:
1. Class 1 (Stealth/Screened): a Facility with Antennas mounted on an existing or proposed non-residential building or other structure not primarily intended to be an antenna support structure where Antennas and Support Equipment, including the base station, are fully screened so that they are not visible to the general public.
  2. Class 2 (Visible Antennas): a Facility with Antennas mounted on an existing non-residential building, structure, pole, light standard, Utility Tower, Wireless Tower and/or Lattice Tower.
  3. Class 3 (Public Right-of-Way Installations): a Facility with Antennas installed on a structure located in the public right-of-way.
  4. Class 4 (Freestanding Structure): a Facility with Antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the Telecom Facility.
  5. Class 5 (Temporary): a Facility including associated Support Equipment that is installed at a site on a temporary basis pursuant to a Limited Term Permit. A Class 5 installation may also be installed in connection with a special event upon the approval of a Special Events Permit pursuant to Chapter 11.03 without a Limited Term Permit.
- H. FCC. FCC means the Federal Communications Commission, the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.
- I. Feasible or Feasibly. Feasible or Feasibly means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.
- J. Lattice Tower. Lattice Tower means a freestanding open framework structure used to support Antennas, typically with three or four support legs of open metal crossbeams or crossbars.
- K. Monopole. Monopole means a single free-standing pole or pole-based structure solely used to act as or support a Telecom Antenna or Antenna Arrays.
- L. Operator or Telecom Operator. Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility or facilities within the City. The definition does not include a property owner(s) who leases property for a Telecom Facility.
- M. Public Right-of-Way. Public Right-of-Way or (“PROW”) means the improved or unimproved surface of any street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots.

- N. **Stealth or Stealth Facility.** Stealth or Stealth Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition. An artificial tree is not a Stealth Facility.
- O. **Support Equipment.** Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the Facility's Antenna or Antennas, including but not limited to a base station, cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support Equipment does not include DAS, Antennas or the building or structure to which the Antennas or other equipment are attached.
- P. **Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or Facility.** Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or simply Facility or Facilities means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.
- Q. **Utility Pole.** Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.
- R. **Utility Tower.** Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.
- S. **Wireless Tower.** Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A Distributed Antenna System (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, street light, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a Wireless Tower for purposes of this definition. For an example only, a prior-existing street light standard which is replaced with a new street light standard to permit the addition of Antennas shall not be considered a Wireless Tower, but rather a replacement street light standard.

#### **20.49.040 – Telecom Facility Preferences and Prohibited Locations**

- A. **Preferred Locations.** To limit the adverse visual effects of and proliferation of new or individual Telecom Facilities in the City, the following list establishes the order of preference of Facilities, from the most preferred (1) to least preferred (4).

1. Collocation of a new Facility at an existing Facility.
2. Class 1.
3. Class 2.
4. Class 4.

**B. Prohibited Locations.** Telecom Facilities are prohibited in the following locations:

1. On properties zoned for single-unit or two-unit residential development including equivalent Planned Community District or Specific Plan districts.
2. On properties zoned for multi-unit residential development and mixed-use development including equivalent Planned Community District or Specific Plan districts where the maximum allowable number of dwelling units is four (4) units.
3. In the Open Space (OS) zoning district, unless Telecom Facilities are collocated on an existing Utility Tower within a utility easement area, or collocated on an existing Facility.
4. On traffic control standards (traffic signal poles).

**20.49.050 – General Development and Design Standards**

- A. General Criteria.** All Telecom Facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least visually intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the Facility as visually inconspicuous as practicable. To the greatest extent Feasible, Facilities shall be designed to minimize the visual impact of the Facility by means of location, placement, height, screening, landscaping, and shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP, LTP, or ZC for a Telecom Facility:

1. **Blending.** The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.
2. **Screening.** The extent to which the proposed Telecom Facility is concealed or screened by existing or proposed new topography, vegetation, buildings or other structures.
3. **Size.** The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.
4. **Location.** Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the Facility, including topography, vegetation, buildings, or

other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.

5. Collocation. In evaluating whether the Collocation of a Telecom Facility is Feasible, the criteria listed in 1-4 above shall be used to evaluate the visual effect of the combined number of Facilities at the proposed location.

B. Public View Protection. All new or modified Telecom Facilities, including those facilities considered through an administrative process, shall comply with Section 20.30.100 (Public View Protection). Additionally, potential impacts to public views that are not identified by General Plan Policy NR 20.3 (Public Views) shall be considered and evaluated consistent with Section 20.30.100.

C. Height.

1. The Planning Commission or City Council may approve or conditionally approve a CUP for a Telecom Facility that exceeds the maximum height limit for the zoning district in which the Facility is located provided it does not exceed the maximum height limit by 15 feet after making all of the required findings in Section 20.49.060(I) (Permit Review Procedures).
2. All Telecom Facilities shall comply with height restrictions or conditions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan for John Wayne Airport and Airport Land Use Commission Review Requirements) as may be in force at the time the Telecom Facility is permitted or modified.
3. Telecom Facilities installed on streetlights, Utility Poles, Utility Towers or other similar structures within the public right-of-way shall not exceed 35 feet in height above the finished grade.
4. Telecom Facilities may be installed on existing Utility Poles or Utility Towers that exceed 35 feet above the finished grade where the purposes of the existing Utility Pole or Utility Tower is to carry electricity or provide other wireless data transmission provided that the top of the proposed Antennas do not extend above the top of the Utility Pole or Utility Tower.
5. Telecom Facilities disguised as flagpoles may be installed provided they meet applicable height limits for flagpoles provided in Section 20.30.060.

D. Setbacks. Proposed Telecom Facilities shall comply with the required setback established by the development standards for the zoning district in which the Facility is proposed to be located. Setbacks shall be measured from the any part of the Facility closest to the applicable lot line or structure.

E. Design Techniques. Design techniques shall result in the installation of a Telecom Facility that is in harmony and scale with the surrounding area, screens the installation from view, and prevents the Facility from visually dominating the surrounding area. Design techniques may include the following:

1. Screening elements to disguise, or otherwise hide the Telecom Facility from view from surrounding uses.
2. Painting and/or coloring the Telecom Facility to blend into the predominant visual backdrop.
3. Siting the Telecom Facility to utilize existing features (buildings, topography, vegetation, etc.) to screen or hide the Facility.
4. Utilizing simulated natural features (trees, rocks, etc.) to screen or hide the Telecom Facility.
5. Providing Telecom Facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the Facility would not create greater visual impacts than the Facility itself.
6. To the greatest extent practicable, new Class 4 Facilities shall be designed and sited to allow for the collocation of one additional Telecom Operator.

F. Screening Standards. For Collocation installations, the screening method shall be materially similar to those used on the existing Telecom Facility, and shall not diminish the screening of the Facility. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas and Support Equipment from public view. The Following is a non-exclusive list of potential design and screening techniques that must be considered for all Facility installations:

1. For Class 1 (Stealth/Screened) Installations:
  - a. All Telecom Facility components, including all Antennas, Antenna panels, cables, wires, conduit, mounting brackets, and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind screening elements and not on the exterior face of the building or structure.
  - b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
  - c. When a Telecom Facility is proposed within an existing or new architectural feature such as a steeple, religious symbol, tower, cupola, clock tower, sign tower, etc., the Facility shall blend architecturally compatible with the existing structure or building.
2. For Class 2 (Visible) Installations:
  - a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the

Antennas are mounted. No cables, wires, conduit, mounting brackets or any other associated support equipment shall be visible.

- b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

3. For Class 3 (Public Right-of-Way) Installations:

- a. Whenever Feasible, new Antennas proposed to be installed in the public right-of-way shall be placed on existing utility structures, streetlights, or other existing vertical structures. Antenna installations on existing or replacement streetlight poles, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole.
- b. New or replacement vertical structures may be allowed where approved by the Public Works Department. Replacement poles or streetlights shall be consistent with the size, shape, style, and design of the existing pole, including any attached light arms. New poles or streetlights may be installed provided they match existing or planned poles within the area.
- c. If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the pole.

4. For Class 4 (Freestanding Structure) Installations:

- a. The installation of new Lattice Towers or Monopoles with visible antennas or Antenna Arrays is strongly discouraged. Preferred Monopole designs include fully screened Antennas without visible brackets, cables, or conduit. Additionally, any Lattice Tower or Monopole should be sited in the least obtrusive location as possible.
- b. The construction of new freestanding structures such as signs, monoliths, pyramids, light houses, or other similar vertical structures shall be designed and sited to appropriately complement a site and screen all elements of the Telecom Facility.
- c. The installation of artificial rocks shall match in scale and color other with rock outcroppings in the general vicinity of the proposed site. An artificial rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.
- d. The installation of artificial trees or shrubbery is strongly discouraged. When an artificial tree or shrubbery is proposed, it shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as

to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. All Antennas and Antenna supports shall be contained within the canopy of the tree design or other vegetation comparable to that being replicated by the proposed screening elements. Finally, the addition of new comparable living vegetation may be necessary to enhance the artificial tree or shrubbery screening elements.

- e. Flagpoles shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole.

5. For Class 5 (Temporary) Installations:

A temporary Telecom Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the permitting process reflecting the temporary nature of the Facility.

6. Support Equipment. All Support Equipment associated with the operation of any Telecom Facility shall be placed or mounted in the least visually obtrusive location practicable, and shall be screened from view.

- a. Installations on Private Property. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located on private property:

- (1) Building-Mounted Telecom Facilities. For building or structure-mounted Antenna installations, Support Equipment for the Facility may be located inside the building, in an underground vault, or on the roof of the building that the Facility is located on, provided that both the equipment and any screening materials are architecturally compatible and/or painted the color of the building, roof, and/or surroundings thereby providing screening. If placed in an underground vault, flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated.

- (2) Roof-Mounted Telecom Facilities. All screening materials for roof-mounted Facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the review authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.

- (3) Freestanding Telecom Facilities. For freestanding Facilities installations, not mounted on a building or structure, Support Equipment for the Facility may be visually screened by locating the Support Equipment in a fully enclosed building, in an underground vault, or in a security enclosure consisting of walls and/or landscaping to effectively screen the Support Equipment at the time of installation.

- (4) All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings.
- (5) Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a "closed-mesh" design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of non-reflective material and painted to blend with surrounding materials and colors.
- (6) If placed in an underground vault, flush-to-grade vents, or alternatively, vents that extend no more than 24 inches above the finished grade and are screened from public view may be utilized.

b. Installations in a Public Right-of-Way. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located in a public right-of-way:

- (1) Where the existing utilities services (e.g., telephone, power, cable TV) are located underground, the Support Equipment shall be placed underground, consistent with Chapter 13.20. Flush-to-grade underground vault enclosures, including flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated. Electrical meters required for the purpose of providing power for the proposed Telecom Facility may be installed above ground on a pedestal in a public right-of-way.
- (2) Support equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.
- (3) All transmission or amplification equipment such as remote radio units, tower mounted amplifiers, and surge suppressors shall be mounted inside the streetlight pole without increasing the pole diameter or shall be installed in the vault enclosure supporting the Facility.

G. Night Lighting. Telecom Facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be recommended by the U.S. Flag Code. Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for Facilities on a case-by-case basis.

H. Signs and Advertising. No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by state or federal regulations shall be allowed in its smallest permissible size.



- I. Nonconformities. A proposed Telecom Facility shall not create any new or increased nonconformity as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones unless relief is sought pursuant to applicable Zoning Code procedures.
- J. Maintenance. The Telecom Operator shall be responsible for maintenance of the Telecom Facility in a manner consistent with the original approval of the Facility, including but not limited to the following:
  - 1. Any missing, discolored, or damaged screening shall be restored to its original permitted condition.
  - 2. All graffiti on any components of the Telecom Facility shall be removed promptly in accordance the Newport Beach Municipal Code.
  - 3. All landscaping required for the Telecom Facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead, dying, or damaged.
  - 4. All Telecom Facilities shall be kept clean and free of litter.
  - 5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the Telecom Operator.
  - 6. If a flagpole is used for a Telecom Facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code (4 U.S.C. § 1 *et seq.*).

#### **20.49.060 – Permit Review Procedures**

- A. Application Procedures. Applications for Telecom Facilities shall be subject to Chapters 20.50 (Permit Application Filing and Processing), 20.52 (Permit Review Procedures), and 20.54 (Permit Implementation, Time Limits, and Extensions) unless otherwise modified by this Section. Applications shall be processed consistent with the FCC Declaratory Ruling FCC 09-99 (“Shot Clock”) deadlines or as redefined in the future by applicable State or federal law. All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside third-party technical or legal services in connection with the application.
- B. Installations in the Public Right-of-Way. All Telecom Facilities proposed to be located in the public right-of way shall comply with the provisions of Title 13.
- C. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties. Prior to the submittal for any application for any Facility located on any City-owned property or City-held trust property, the applicant shall first obtain written authorization from the City Manager or its designee to submit an application.

- D. Permit Required. All Telecom Facilities shall obtain a MUP, CUP, LTP, or ZC if not prohibited by subsection 20.49.040(B) as provided in Table 4-1. Notwithstanding permits identified in Table 4-1, any application for a Facility that proposes to exceed the maximum height limit of the applicable zoning district in which the Facility is located shall require the issuance of a CUP by the Planning Commission.

Table 4-1

## Permit Requirement for Telecom Facilities

Facility Class	Permit
Class 1	ZC
Class 2	MUP
Class 3	MUP
Class 4	CUP
Class 5	LTP

- E. Review of Collocated Facilities. Notwithstanding any provision of this Chapter to the contrary, pursuant to California Government Code section 65850.6 (as amended or superseded), the addition of a new Facility to an existing Facility resulting in the establishment of a Collocated Telecom Facility shall be allowed without a discretionary review provided it meets section 20.49.090. If such a Collocated Telecom Facility does not satisfy all of the requirements of Government Code section 65850.6 and Section 20.49.090, the Facility shall be reviewed pursuant to the review procedures provided in Table 4-1.
- F. Emergency Communications Review. At the time an application is submitted to the Community Development Department, a copy of the Plans, Map, and Emission Standards shall be sent to the Chief of the Newport Beach Police Department. The Police Department or its designee shall review the plan's potential conflict with emergency communications. The review may include a pre-installation test of the Telecom Facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the Facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference.
- G. Public Notice and Public Hearing Requirements. An application for a MUP, CUP or LTP shall require public notice and a public hearing in accordance with Chapter 20.62 (Public Hearings).
- H. Required Findings for Telecom Facilities. The following findings shall apply to all Facilities requiring discretionary review:
1. General. The review authority may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following:

- a. The proposed Telecom Facility is visually compatible with the surrounding neighborhood.
  - b. The proposed Telecom Facility complies with height, location and design standards, as provided for in this Chapter.
  - c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot Feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.
  - d. An alternative plan that would result in a higher priority Facility Class category for the proposed Facility is not available or reasonably Feasible and desirable under the circumstances.
2. Findings to Increase Height. The Planning Commission may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the maximum height limit for the zoning district in which the Facility is located up to a maximum of 15 feet only after making each of the following findings in addition to the required findings above, as well the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):
- a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces.
  - b. Establishment of the Telecom Facility at the requested height is necessary to provide service.

#### **20.49.070 – Permit Implementation, Time Limits, Extensions, and Appeals**

- A. The process for implementation or “exercising” of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).
- B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

#### **20.49.080 – Agreement for Use of City-Owned or City-Held Trust Property**

When applying for a permit pursuant to this Chapter, all Telecom Facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions in the City Council Policy Manual.

Prior to entering into an agreement, the applicant shall obtain a MUP, CUP, LTP or ZC. Upon the issuance of a MUP, CUP, LTP or ZC, as required, and upon entering into an agreement, the applicant shall obtain any and all necessary ministerial permits, including, encroachment permits for work to be completed in the public right-of-way, and building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements.

#### **20.49.90 – Modification and Collocation of Existing Telecom Facilities**

Notwithstanding any provision in this Chapter of the Zoning Code, a request to modify an existing Facility that involves the Collocation of new transmission equipment, the removal of existing transmission equipment, or the replacement of existing transmission equipment shall be subject to a ministerial review and approval of a ZC without processing any discretionary permit provided that such modification does not substantially change the existing Facility from the original permit for the Facility. A substantial change means a single change, or series of changes over time, that exceeds five percent (5%) of the physical dimensions of the original approved Telecom Facility, or as defined by applicable State or federal law in the future.

Each application submitted under this section for a modification or collocation to an existing Telecom Facility shall be accompanied by:

1. A detailed description of the proposed modifications to the existing Telecom Facility(ies);
2. A photograph or description of the Telecom Facility as originally constructed, if available; a current photograph of the existing Facility; and, a graphic depiction of the Facility after modification showing all relevant dimensions;
3. A detailed description of all construction that will be performed in connection with the proposed modification; and
4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications do not constitute a substantial change of the existing permitted Facility.

Any permit issued will be conditioned upon, and may be revoked, and the Telecom Facility shall be required to be removed or restored to its pre-modification condition if any material statement made with respect to the Facility application is false or the modifications as actually made would have required a discretionary review had the plan for the Facility depicted the modifications.

#### **20.49.100 – Operational and Radio Frequency Compliance and Emissions Report**

At all times, the operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and

standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the Facility is operating at the approved frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq.* Such report shall be based on actual field transmission measurements of the Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require use of the Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the Telecom Operator, the Telecom Operator shall be required to provide an updated, certified radio frequency (RF) compliance and RF emissions safety report.

#### **20.49.110 – Right to Review, Revoke or Modify a Permit**

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

#### **20.49.120 – Removal of Telecom Facilities**

A. Discontinued Use. Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility.
2. Transfer the rights to use the Telecom Facility to another Telecom Operator and the Telecom Operator immediately commences use within a reasonable period of time as determined by the Community Development Director.
3. Remove the Telecom Facility and restore the site.

B. Abandonment. Any Telecom Facility that is not operated for transmission and/or reception for a continuous period of ninety (90) days or whose Telecom Operator did not remove the Facility in accordance with Subsection A shall be deemed abandoned. Upon a finding of abandonment, the City shall provide notice to the Telecom Operator last known to use such Facility and, if

applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility.
2. Transfer the rights to use the Telecom Facility to another Telecom Operator who has agreed to reactivate the Facility within 30 days of the transfer.
3. Remove the Telecom Facility and restore the site.

C. Removal by City.

1. The City may remove an abandoned Telecom Facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.
2. If the City removes an abandoned Telecom Facility, the City may, but shall not be required to, store the removed Facility or any part thereof. The owner of the premises upon which the abandoned Facility was located and all prior operators of the Facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed Facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

- D. City Lien on Property. Until the cost of removal, repair, restoration, and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the Telecom Facility was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City Lien being added to the other costs listed in this subsection.

## **ATTACHMENT PC-2**

**Update to draft Chapter 20.49  
with marked changes**

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## Chapter 20.49 – Wireless Telecommunications Facilities

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### Sections

20.49.010 – Purpose

20.49.020 – Effect of Chapter

**General Provisions**

20.49.030 – Definitions

20.49.040 – **Available Technology**

~~—Location~~ **Telecom Facility Preferences and Prohibited Locations**

20.49.050 – General Development and Design Standards

20.49.060 – Permit Review Procedures

20.49.~~080~~**070** – Permit Implementation, Time Limits, Duration, and Appeals

20.49.080 – Agreement for Use of City-owned or City-held Trust Property

20.49.~~100~~**090** – Modification **and Collocation** of Existing Telecom Facilities

20.49.100 – Operational and Radio Frequency Compliance and Emissions Report

20.49.~~120~~**110** – Right to Review ~~or~~, Revoke **or Modify a** Permit

20.49.120 – Removal of Telecom Facilities

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### 20.49.010 – Purpose

A. The purpose of this Chapter is to provide for the installation, modification, operation and maintenance of wireless telecommunication facilities (“Telecom Facilities”) on public and private property consistent with State and federal law while ensuring public safety, reducing the visual effects of Telecom ~~equipment~~Facilities on public streetscapes, protecting ~~scenic, ocean and coastal~~ public views, and otherwise avoiding and mitigating the visual impacts of such facilities. ~~More specifically, the regulations contained herein are intended to; 1) encourage the location of Antennas in non residential areas, 2) encourage Collocation at new and existing Antenna sites, and 3) encourage Telecom Facilities to be located in areas where adverse visual impacts on the community and public views are minimized.~~

B. Telecom Facilities shall utilize the least obtrusive available technology in order to reduce or minimize the number of Telecom Facilities in the City and thereby reduce their visual impact on the community.

~~B.C.~~ C. The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This Chapter shall be applied to providers, operators, and maintainers of wireless services regardless of whether authorized by State or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.

~~C. All Telecom Facilities approved under this Chapter shall utilize the most efficient and least obtrusive available technology in order to minimize the number of Telecom Facilities in the City and reduce their visual impact on the community and public views.~~

## 20.49.020 – Effect of Chapter

- A. Regulatory Scope. These regulations are applicable to all Telecom Facilities providing wireless voice and/or data transmission such as, but not limited to, cell phone, internet, and radio relay stations.
- B. Permit and/or Agreement Required. Prior to construction or modification of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), Limited Term Permit (LTP), or Zoning Clearance (ZC), ~~depending on the proposed location, Antenna Class, and method of installation,~~ in accordance with Section 20.49.070060 (Permit Review Procedures). Applicants who obtain a MUP, CUP, LTP, or ZC (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust property, shall enter into an agreement prepared and executed by the City Manager or its designee prior to construction of the Facility, consistent with Section 20.49.090080 (Agreement for Use of City-owned or City-held Trust Property).
- C. Exempt Facilities. The following types of facilities are exempt from the provisions of this Chapter:
  - 1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).
  - 2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices (“OTARD”) rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.
  - 3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.
  - 4. Facilities exempt from some or all of the provisions of this Chapter by operation of State or federal law to the extent so determined by the City.
  - 5. Systems installed or operated at the direction of the City or its contractor.
  - 6. Systems installed entirely within buildings for the sole purpose of providing wireless telecommunications ~~services~~ or data transmission services to building occupants.
- D. Other Regulations. Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:

1. Rules, regulations, policies, or conditions in any permit, license, or agreement issued by a local, state or federal agency which has jurisdiction over the Telecom Facility.
  2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).
- E. Regulations not in Conflict or Preempted. All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter:
1. All applicable City design guidelines and standards.
  2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.
- F. Legal Nonconforming Facility. Any Telecom Facility that ~~is~~was lawfully constructed, erected, or approved prior to ~~the effective date of this Chapter~~[INSERT EFFECTIVE DATE OF THIS CHAPTER], that is operating in compliance with all applicable laws, and which Facility does not conform to the requirements of this Chapter shall be accepted and allowed as a legal nonconforming Facility ~~if otherwise approved and constructed.~~ Legal nonconforming ~~Telecom~~ Facilities shall comply at all times with the laws, ordinances, ~~and~~ regulations, and any conditions of approval in effect at the time the ~~application~~Facility was ~~deemed complete~~approved, and any applicable federal and State laws as they may be amended or enacted, ~~and shall at all times comply with any conditions of approval~~in the future.

#### **20.49.030 – Definitions.**

For the purposes of this Chapter, the following definitions shall apply:

- A. Antenna. Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, Antennas, arrays, or other similar devices.
- B. Antenna Array. Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and Antenna support structure, all of which elements are deemed to be part of the Antenna.
- ~~C. Antenna Classes.~~ Antenna Base Station. Base Station means the electronic equipment and appurtenant Support Equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. A Base Station does not include the Antennas, Antenna support structure, or any portion of Distributed Antenna System (DAS).
- D. City-owned or City-held Trust Property. City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the

public right-of-way, within the City's jurisdiction, including but not limited to City Hall, Police and Fire facilities, recreational facilities, parks, beaches, libraries, monuments, signs, streetlights and traffic control standards.

E. Collocation. Collocation means an arrangement whereby multiple Telecom Facilities are installed on the same building or structure.

F. Distributed Antenna System, DAS. Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a "hub" or "hotel" where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.

G. Facility Classes. Facility Classes are Telecom Facilities and the attendant Support Equipment separated into the following distinct classes:

1. Class 1 (Stealth/Screened): a Facility with Antennas mounted on an existing or proposed non-residential building or other structure not primarily intended to be an antenna support structure where Antennas and Support Equipment, including the base station, are fully screened so that they are not visible to the general public.
2. Class 2 (Visible Antennas): a Facility with Antennas mounted on an existing non-residential building, structure, pole, light standard, Utility Tower, Wireless Tower and/or Lattice Tower.
3. Class 3 (Public Right-of-Way Installations): a Facility with Antennas installed on a structure located in the public right-of-way.
4. Class 4 (Freestanding Structure): a Facility with Antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the Telecom Facility.
5. Class 5 (Temporary): a Facility including associated Support Equipment that is installed at a site on a temporary basis pursuant to a Limited Term Permit. A Class 5 installation may also be installed in connection with a special event upon the approval of a Special Events Permit pursuant to Chapter 11.03 without a Limited Term Permit.

~~D. Base Station. Base Station means the electronic equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. Base Station does not include the Antennas and Antenna support structure, or the Support Equipment, nor does it include any portion of DAS.~~

~~E. City owned or City held Trust Property. City owned or City held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City's jurisdiction, including but is not limited to City Hall,~~

~~Police and Fire facilities, recreational facilities, parks, libraries, monuments, signs, streetlights and traffic control standards.~~

~~**F. Collocation.** Collocation means an arrangement whereby multiple Telecom Facilities are installed on the same building or structure.~~

~~**G. Distributed Antenna System, DAS.** Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third party wireless service providers. DAS also includes the equipment location, sometimes called a “hub” or “hotel” where the DAS network is interconnected with third party wireless service providers to provide the signal transfer services.~~

H. FCC. FCC means the Federal Communications Commission, the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.

I. Feasible or Feasibly. Feasible or Feasibly means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.

J. Lattice Tower. Lattice Tower means a freestanding open framework structure used to support Antennas, typically with three or four support legs of open metal crossbeams or crossbars.

K. Monopole. Monopole means a single free-standing pole or pole-based structure solely used to act as or support a Telecom Antenna or Antenna Arrays.

L. Operator or Telecom Operator. Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility or facilities within the City. The definition does not include a property owner(s) who leases property for a Telecom Facility.

M. Public Right-of-Way. Public Right-of-Way or (“PROW”) means the improved or unimproved surface of any street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots.

N. Stealth or Stealth Facility. Stealth or Stealth Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition. ~~A false~~ An artificial tree is not a Stealth Facility.

- O. Support Equipment. Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the Facility's Antenna or Antennas, including but not limited to a base station, cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support Equipment does not include DAS, Antennas or the building or structure to which the Antennas or other equipment are attached.
- P. Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or Facility. Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or simply Facility or Facilities means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.
- Q. Utility Pole. Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.
- R. Utility Tower. Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.
- S. Wireless Tower. Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A Distributed Antenna System (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, street light, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a Wireless Tower for purposes of this definition. For an example only, a prior-existing street light standard which is replaced with a new street light standard to permit the addition of Antennas shall not be considered a Wireless Tower, but rather a replacement street light standard.

#### **20.49.050 – Location 040 – Telecom Facility Preferences, and Prohibited Locations**

- A. Preferred Locations. To limit the adverse visual effects of and proliferation of new or individual Telecom Facilities in the City, the following list establishes the order of preference ~~for the location and installation of Telecom Facilities, from highest priority location and technique~~ the most preferred (1) to lowest, least preferred (4).
  - 1. Collocation of a new Facility at an existing Facility.
  - 2. Class 1.

3. Class 2.

~~4. Class 3.~~

~~5. Class 4.~~

~~6.4. Class 5.~~

B. Prohibited Locations. Telecom Facilities are prohibited in the following locations:

1. On properties zoned for single-unit or two-unit residential development, including equivalent ~~PC~~Planned Community District ~~designation or Specific Plan districts~~.
2. On properties zoned for multi-unit residential development and mixed-use development including equivalent Planned Community District or Specific Plan districts where the maximum allowable number of dwelling units is four (4) units.
3. In the Open Space (OS) zoning district, unless Telecom Facilities are collocated on an existing Utility Tower within a utility easement area, or collocated on an existing ~~Telecom~~ Facility.

~~4. On streetlights.~~

~~C. Installations in the Public Right of Way. All Telecom Facilities proposed to be located in the public right of way shall comply with the provisions of Title 13. Antenna installations on an existing or replacement streetlight pole shall be compatible in design, scale, and proportion to streetlights and the pole on which they are mounted.~~

~~D. Collocation Installations. A new Telecom Facility proposed within one thousand (1,000) feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the existing Telecom Facility.~~

~~1. Exception: If the reviewing authority determines, based on compelling evidence submitted by the applicant, that Collocation of one or more new Telecom Facilities within one thousand (1,000) feet of an existing Telecom Facility is not Feasible, then such Collocation shall not be required.~~

~~2. Condition Requiring Future Collocation. In approving a Telecom Facility, the review authority may impose a condition of approval providing for future Collocation of Telecom Facilities by other carriers at the same site.~~

4. On traffic control standards (traffic signal poles).

**20.49.060050 – General Development and Design Standards.**

- A. General Criteria. All Telecom Facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least visually intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the ~~Telecom~~ Facility as visually inconspicuous as possible/practicable. To the greatest extent Feasible, ~~Telecom~~ Facilities shall be designed to minimize the visual impact of the ~~Telecom~~ Facility by means of location, placement, height, screening, landscaping, and shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP, LTP, or ZC for a Telecom Facility:

1. Blending. The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.
2. Screening. The extent to which the proposed Telecom Facility is concealed or screened by existing or proposed new topography, vegetation, buildings or other structures.
3. Size. The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.
4. Location. Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the ~~Telecom~~ Facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.

5. Collocation. In evaluating whether the Collocation of a Telecom Facility is Feasible, the criteria listed in 1-4 above shall be used to evaluate the visual effect of the combined number of Facilities at the proposed location.

- B. Public View Protection. All new or modified Telecom Facilities ~~involving a site adjacent to, including those facilities considered through~~ an administrative process, shall comply with Section 20.30.100 (Public View Protection). Additionally, potential impacts to public views that are not identified ~~public view point or corridor, as identified in~~ by General Plan Policy NR 20.3 (Public Views), shall be reviewed to evaluate the potential impact to public views considered and evaluated consistent with Section 20.30.100 ~~(Public View Protection).~~

- C. Height.

- ~~1. Telecom Facilities installed on buildings or other structures shall comply with the base height limit established in Part 2 (Zoning Districts, Allowable Uses, and Zoning District Standards) for the zoning district in which the Telecom Facility is located.~~



~~2-1.~~ Applications for the installation of Telecom Facilities proposed to be greater than the base height limit for the zoning district in which the Telecom Facility is located shall be subject to review and action by the Planning Commission. The Planning Commission or City Council may approve or conditionally approve a CUP for a Telecom Facility ~~to that exceeds the maximum height limit for the zoning district in which the Facility is located provided it does not~~ exceed the ~~base~~maximum height limit by 15 feet after making all of the required findings in Section 20.49.070.H060(I) (Permit Review Procedures).

~~3-2.~~ All Telecom Facilities shall comply with ~~Antenna~~ height restrictions or conditions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan ~~(AELUP)~~ for John Wayne Airport and Airport Land Use Commission ~~(ALUC)~~ Review Requirements) as may be in force at the time the Telecom Facility is permitted or modified.

~~4.~~ Antennas shall be installed at the minimum height possible to provide average service to the Telecom Operator's proposed service area. In any case, no Antenna or other telecom equipment or screening structure shall extend higher than the following maximum height limits:

~~5-3.~~ Telecom Facilities installed on ~~streetlight standards~~streetlights, Utility Poles, Utility Towers or other similar structures within the public right-of-way shall not exceed 35 feet in height above the finished grade.

~~6-4.~~ Telecom Facilities may be installed on existing Utility Poles or Utility Towers that exceed 35 feet above the finished grade where the purposes of the existing Utility Pole or Utility Tower is to carry electricity or provide other wireless data transmission provided that the top of the ~~Antenna does~~proposed Antennas do not extend above the top of the Utility Pole or Utility Tower.

~~7-5.~~ Telecom Facilities ~~installed in ground-mounted~~disguised as flagpoles may be installed ~~at a maximum~~provided they meet applicable height ~~of 35 feet~~limits for flagpoles provided in Section 20.30.060.

D. Setbacks. Proposed Telecom Facilities shall comply with the required setback established by the development standards for the zoning district in which the ~~Telecom~~ Facility is proposed to be located. Setbacks shall be measured from the any part of the ~~Telecom~~ Facility closest to the applicable lot line or structure.

E. Design Techniques. Design techniques shall result in the installation of a Telecom Facility that is in harmony and scale with the surrounding area, ~~hide~~screens the installation from ~~predominant views from surrounding properties~~view, and prevents the ~~Telecom~~ Facility from visually dominating the surrounding area. Design techniques may include the following:

1. Screening elements to disguise, or otherwise hide the Telecom Facility from view from surrounding uses.
2. Painting and/or coloring the Telecom Facility to blend into the predominant visual backdrop.
3. Siting the Telecom Facility to utilize existing features (buildings, topography, vegetation, etc.) to screen or hide the ~~Telecom~~ Facility.
4. Utilizing simulated natural features (trees, rocks, etc.) to screen or hide the Telecom Facility.

5. Providing Telecom Facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the ~~Telecom~~ Facility would not create greater visual impacts than the ~~Telecom~~ Facility itself.

~~5-6.~~ To the greatest extent practicable, new Class 4 Facilities shall be designed and sited to allow for the collocation of one additional Telecom Operator.

F. Screening Standards. For Collocation installations, the screening method shall be materially similar to those used on the existing Telecom Facility, and shall not diminish the screening of the ~~Telecom~~ Facility. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas and Support Equipment from public view. The Following is a non-exclusive list of potential design and screening techniques that ~~should~~must be considered for all Facility installations:

1. For Class 1 (Stealth/Screened) ~~Antenna~~ Installations:

- a. All Telecom Facility components, including all Antennas, Antenna panels, cables, wires, conduit, mounting brackets, and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind ~~the proposed~~ screening elements and not on the exterior face of the building or structure.
- b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
- c. ~~In conditions where the Antennas and Support Equipment are installed~~When a Telecom Facility is proposed within an existing or new freestanding structure, (an architectural feature such as a steeple, religious symbol ~~or,~~ tower, cupola, clock tower, sign tower, etc.),, the installation Facility shall blend ~~in the predominant visual backdrop so it appears to be a decorative and attractive architectural feature~~architecturally compatible with the existing structure or building.

2. For Class 2 (Visible) ~~Antenna~~ Installations:

- a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the Antennas are mounted. No cables ~~and, wires, conduit,~~ mounting brackets or any other associated support equipment ~~or wires~~ shall be visible ~~from above, below or the side of the Antennas.~~
- b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

3. For Class 3 (Public Right-of-Way) ~~Antenna~~ Installations:

- a. Whenever Feasible, new Antennas proposed to be installed in the public right-of-way shall be placed on existing ~~or replacement~~ utility structures, ~~light standards~~ streetlights, or other existing vertical structures. Antenna installations on existing or replacement streetlight poles, ~~traffic control standards~~, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole.

b. New or replacement vertical structures may be allowed where approved by the Public Works Department. Replacement poles or streetlights shall be consistent with the size, shape, style, and design of the existing pole, including any attached light arms. New poles or streetlights may be installed provided they match existing or planned poles within the area.

~~b.c.~~ If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the ~~existing~~ pole.

~~c. If a new pole is proposed to replace an existing pole, the replacement pole shall be consistent with the size, shape, style and design of the existing pole, including any attached light arms.~~

4. For Class 4 (Freestanding Structure) ~~Antenna~~ Installations:

a. ~~For a false rock, the proposed~~ The installation of new Lattice Towers or Monopoles with visible antennas or Antenna Arrays is strongly discouraged. Preferred Monopole designs include fully screened Antennas without visible brackets, cables,

or conduit. Additionally, any Lattice Tower or Monopole should be sited in the least obtrusive location as possible.

b. The construction of new freestanding structures such as signs, monoliths, pyramids, light houses, or other similar vertical structures shall be designed and sited to appropriately complement a site and screen structureall elements of the Telecom Facility.

a-c. The installation of artificial rocks shall match in scale and color other with rock outcroppings in the general vicinity of the proposed site. ~~A false~~An artificial rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.

b-d. The installation of a false tree (such as but without limitation a monopineartificial trees or monopalm, or false shrubbery) is strongly discouraged. When an artificial tree or shrubbery is proposed, it shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. ~~For false trees or shrubbery installations,~~ All Antennas and Antenna supports shall be contained within the canopy of the tree design, ~~and or~~ other vegetation comparable to that being replicated ~~inby~~ the proposed ~~screen structure shall be prevalent in the immediate vicinity of the antenna site, and~~screening elements. Finally, the addition of new comparable living vegetation may be necessary to enhance the ~~false~~artificial tree or shrubbery ~~screen structurescreening elements.~~

c-e. For installations of a flagpole, the poleFlagpoles shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole.

5. For Class 5 (Temporary) ~~Antenna~~ Installations:

A temporary Telecom Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the permitting process reflecting the temporary nature of the ~~Telecom~~ Facility.

6. Support Equipment. All Support Equipment associated with the operation of any Telecom Facility shall be placed or mounted in the least visually obtrusive location ~~possible~~practicable, and shall be screened from view.

a. Installations on Private Property. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located on private property:

- (1) Building-Mounted Telecom Facilities. For building or structure-mounted Antenna installations, Support Equipment for the ~~Telecom~~ Facility may be located inside the building, in an underground vault, or on the roof of the building that the ~~Telecom~~ Facility is located on, provided that both the equipment and any screening materials are architecturally compatible and/or painted the color of the building, roof, and/or surroundings thereby providing screening. If placed in an underground vault, flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated.
  - (2) Roof-Mounted Telecom Facilities. All screening materials for roof-mounted ~~Telecom~~ Facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the review authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
  - (3) Freestanding Telecom Facilities. For freestanding ~~Telecom~~ Facilities installations, not mounted on a building or structure, Support Equipment for the ~~Telecom~~ Facility may be visually screened by locating the Support Equipment in a fully enclosed building, in an underground vault, or in a security enclosure consisting of walls and/or landscaping to effectively screen the Support Equipment at the time of installation.
  - (4) All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings.
  - (5) Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a "closed-mesh" design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of non-reflective material and painted to blend with surrounding materials and colors.
  - (6) If placed in an underground vault, flush-to-grade vents, or alternatively, vents that extend no more than 24 inches above the finished grade and are screened from public view may be utilized.
- b. Installations in a Public Right-of-Way. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located in a public right-of-way:
- (1) Where the existing utilities services (e.g., telephone, power, cable TV) are located underground, the Support Equipment shall be placed underground, consistent with Chapter 13.20. Flush-to-grade underground vault enclosures, including flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be

incorporated. Electrical meters required for the purpose of providing power for the proposed Telecom Facility may be installed above ground on a pedestal in a public right-of-way.

(2) Support equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.

(3) All transmission or amplification equipment such as remote radio units, tower mounted amplifiers, and surge suppressors shall be mounted inside the streetlight pole ~~or traffic control standard~~ without increasing the pole diameter or shall be installed in ~~a flush-to-grade~~ the vault enclosure ~~adjacent to the base of~~ supporting the pole Facility.

G. Night Lighting. Telecom Facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be recommended by the U.S. Flag Code. Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for ~~Telecom~~ Facilities on a case-by-case basis.

H. Signs and Advertising. No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by state or federal regulations shall be allowed in its smallest permissible size.

I. Nonconformities. A proposed Telecom Facility shall not create any new or increased nonconformity as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones unless relief is sought pursuant to applicable Zoning Code procedures.

J. Maintenance. The Telecom Operator shall be responsible for maintenance of the Telecom Facility in a manner consistent with the original approval of the ~~Telecom~~ Facility, including but not limited to the following:

1. Any missing, discolored, or damaged screening shall be restored to its original permitted condition.
2. All graffiti on any components of the Telecom Facility shall be removed promptly in accordance the Newport Beach Municipal Code.
3. All landscaping required for the Telecom Facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead ~~or~~ dying, or damaged.
4. All Telecom Facilities shall be kept clean and free of litter.

5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the FacilityTelecom Operator.
6. If a flagpole is used for a Telecom Facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code (4 U.S.C. § 1 *et seq.*).

#### **20.49.070060 – Permit Review Procedures.**

- A. Application Procedures. Applications for Telecom Facilities shall be subject to Chapters 20.50, (Permit Application Filing and Processing), 20.52, (Permit Review Procedures), and 20.54 (Permit Implementation, Time Limits, and Extensions) unless otherwise modified by this Section. Applications shall be processed consistent with the FCC Declaratory Ruling FCC 09-99 (“Shot Clock”) deadlines or as redefined in the future by applicable State or federal law. All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside third-party technical or legal services in connection with the application.
- ~~B. **Permit Required.** Installations in the Public Right-of-Way. All Telecom Facilities shall obtain a MUP, CUP, LTP, or ZC if not prohibited by subsection 20.49.050.B, depending on the Antenna Class and location, as specified in the Table 4-1:~~

**Table 4-1**

#### **Permit Requirements for Telecom Facilities**

<b>Location of Proposed Telecom Facility</b>	<b>Antenna Class and Permit Requirement</b>				
	<b>Class 1 (a)</b>	<b>Class 2 (a) (b)</b>	<b>Class 3 (a) (b)</b>	<b>Class 4 (a) (b)</b>	<b>Class 5 (a)</b>
<del>Facility located in any Zoning District, Planned Community, or Specific Plan within 150 feet of any Residential District or their equivalent residential land use designation within a Planned Community District or Specific Plan.</del>	<del>ZC</del>	<del>MUP</del>	<del>MUP</del>	<del>MUP</del>	<del>LTP</del>
<del>Facility not located in the area identified in Subsection 1 but located in or within 150 feet of Open Space Districts (OS), Public Facilities Districts (PF), Parks and Recreation Districts (PR), or their equivalent land use designations within a Planned Community District or Specific Plan.</del>	<del>ZC</del>	<del>MUP</del>	<del>MUP</del>	<del>CUP</del>	<del>LTP</del>
<del>Facility not located in the other areas identified</del>	<del>ZC</del>	<del>CUP</del>	<del>MUP</del>	<del>CUP</del>	<del>LTP</del>

~~(a) Any application for a Telecom Facility that proposes proposed to exceed the base height limit of the applicable zoning district in which the Telecom Facility is located shall require review and action of a CUP by be located in the Planning Commission.~~

~~C.B. DAS installed on an existing streetlight pole, existing utility pole or other existing structure may be allowed subject to issuance of a Zoning Clearance (ZC) when public right-of way shall comply with the Director determines the Facility complies with the screening requirements provisions of Title 13.~~

~~D.C. C.~~ Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties. Prior to the submittal for any application for any ~~Telecom~~ Facility located on any City-owned property or City-held trust property, the applicant shall first obtain written authorization from the City Manager or its designee to submit an application.

~~D. Fee.~~ All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside technical or legal services in connection with the application.

~~E. Review Process.~~ Review of applications for all Telecom Facilities in City shall be consistent with Chapter 20.50 (Permit Application Filing and Processing), and the FCC Declaratory Ruling FCC 09-99 ("Shot Clock") deadlines.

~~D. F.~~ Permit Required. All Telecom Facilities shall obtain a MUP, CUP, LTP, or ZC if not prohibited by subsection 20.49.040(B) as provided in Table 4-1. Notwithstanding permits identified in Table 4-1, any application for a Facility that proposes to exceed the maximum height limit of the applicable zoning district in which the Facility is located shall require the issuance of a CUP by the Planning Commission.

Table 4-1

Permit Requirement for Telecom Facilities

<u>Facility Class</u>	<u>Permit</u>
<u>Class 1</u>	<u>ZC</u>
<u>Class 2</u>	<u>MUP</u>
<u>Class 3</u>	<u>MUP</u>
<u>Class 4</u>	<u>CUP</u>
<u>Class 5</u>	<u>LTP</u>

E. Review of Collocated Facilities. Notwithstanding any provision of this Chapter to the contrary, pursuant to California Government Code section 65850.6 (as amended or superseded), the addition of a new ~~Telecom~~ Facility to an existing ~~Telecom~~ Facility resulting in the establishment of a Collocated Telecom Facility shall be allowed without a



discretionary review provided it meets section 20.49.~~100090~~. If such a Collocated Telecom Facility does not satisfy all of the requirements of Government Code section 65850.6 and Section 20.49.~~100090~~, the Facility shall be reviewed pursuant the review procedures provided in Table 4-1.

- F. ~~G.~~ Emergency Communications Review. At the time an application is submitted to the Community Development Department, a copy of the Plans, Map, and Emission Standards shall be sent to the Chief of the Newport Beach Police Department. The Police Department or its designee shall review the plan's potential conflict with emergency communications. The review may include a pre-installation test of the Telecom Facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the ~~Telecom~~ Facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference.
- G. ~~H.~~ Public Notice and Public Hearing Requirements. An application for a MUP, CUP or LTP shall require ~~a~~ public notice, and a public hearing ~~shall be conducted,~~ in complianceaccordance with Chapter 20.62 (Public Hearings).
- H. ~~I.~~ Required Findings for Telecom Facilities. The following findings shall apply to all ~~Telecom~~ Facilities requiring discretionary review:
1. ~~1.~~ General. The review authority may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following:
    - a. The proposed Telecom Facility is visually compatible with the surrounding neighborhood.
    - b. The proposed Telecom Facility complies with ~~the technology~~, height, location and design standards, as provided for in this Chapter.
    - c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot Feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.
    - d. An alternative ~~Antenna construction~~ plan that would result in a higher priority Antenna Facility Class category for the proposed ~~Telecom~~ Facility is not available or reasonably Feasible and desirable under the circumstances.
  2. ~~2.~~ Findings to Increase Height. The ~~review authority~~ Planning Commission may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the ~~base~~ maximum height limit for the zoning district in which the ~~Telecom~~ Facility is located up to a maximum of 15 feet only after making each of the following

findings in addition to the required findings above, as well the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):

- a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces.
- b. Establishment of the Telecom Facility at the requested height is necessary to provide service.

#### **20.49.080070 – Permit Implementation, Time Limits, Extensions, and Appeals.**

- A. The process for implementation or “exercising” of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).
- B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

#### **20.49.090080 – Agreement for Use of City-Owned or City-Held Trust Property.**

When applying for a permit pursuant to this Chapter, all Telecom Facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions in the City Council Policy Manual.

Prior to entering into an agreement, the applicant shall obtain a MUP, CUP, LTP or ZC. Upon the issuance of a MUP, CUP, LTP or ZC, as required, and upon entering into an agreement, the applicant shall obtain any and all necessary ministerial permits, including, encroachment permits for work to be completed in the public right-of-way, and building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements.

#### **20.49.100090 – Modification and Collocation of Existing Telecom Facilities.**

Notwithstanding any provision in this Chapter of the Zoning Code, a request to modify an existing Facility that involves the Collocation of new transmission equipment, the removal of existing transmission equipment, or the replacement of existing transmission equipment shall be subject to a ministerial review and approval of a ZC without ~~the processing of~~ any discretionary permit provided that such modification does not substantially change the existing Facility from the original permit for the Facility. A substantial change means a single change, or series of changes over time, that exceeds five percent (5%) of the physical ~~dimension~~dimensions of the original approved Telecom Facility ~~approved, or as part of the original discretionary permit~~defined by applicable State or federal law in the future.

Each application submitted under this section for a modification or collocation to an existing Telecom Facility shall be accompanied by:

1. A detailed description of the proposed modifications to the existing Telecom Facility(ies);
2. A photograph or description of the Telecom Facility as originally constructed, if available; a current photograph of the existing ~~Telecom~~-Facility; and, a graphic depiction of the ~~Telecom~~ Facility after modification showing all relevant dimensions;
3. A detailed description of all construction that will be performed in connection with the proposed modification; and
4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications do not constitute a substantial change of the existing permitted Facility.

Any permit issued will be conditioned upon, and may be revoked, and the Telecom Facility shall be required to be removed or restored to its pre-modification condition if: any material statement made with respect to the Facility application is false or the modifications as actually made would have required a discretionary review had the plan for the Facility depicted the modifications.

- ~~1. Any material statement made with respect to the Telecom Facility is false; or~~
- ~~2. The modifications as actually made would have triggered a discretionary review.~~

#### **20.49. ~~110~~100 – Operational and Radio Frequency Compliance and Emissions Report.**

At all times, the operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the ~~Telecom~~-Facility is operating at the approved frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq.* Such report shall be based on actual field transmission measurements of the ~~Telecom~~-Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the ~~Telecom~~-Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require ~~that~~ use of the ~~Telecom~~ Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the Telecom Operator, the Telecom Operator shall be required to provide an updated, certified radio frequency (RF) compliance and RF emissions safety report.

~~A qualified independent radio frequency engineer selected and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the permittee, which shall promptly reimburse City for the cost of the review.~~

**20.49.120110 – Right to Review ~~or~~, Revoke or Modify a Permit.**

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

**20.49.130120 – Removal of Telecom Facilities.**

A. Discontinued Use. Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility.
2. Transfer the rights to use the Telecom Facility to another Telecom Operator and the Telecom Operator immediately commences use within a reasonable period of time as determined by the Community Development Director.
3. Remove the Telecom Facility and restore the site.

B. Abandonment. Any Telecom Facility that is not operated for transmission and/or reception for a continuous period of ninety (90) days or whose Telecom Operator did not remove the ~~Telecom~~ Facility in accordance with Subsection A shall be deemed abandoned. Upon a finding of abandonment, the City shall provide notice to the Telecom Operator last known to use such Facility and, if applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility.
2. Transfer the rights to use the Telecom Facility to another Telecom Operator who has agreed to reactivate the ~~Telecom~~ Facility within 30 days of the transfer.

3. Remove the Telecom Facility and restore the site.

C. Removal by City.

1. ~~1.~~ The City may remove an abandoned Telecom Facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.

2. ~~2.~~ If the City removes an abandoned Telecom Facility, the City may, but shall not be required to, store the removed ~~Telecom~~ Facility or any part thereof. The owner of the premises upon which the abandoned ~~Telecom~~ Facility was located and all prior operators of the ~~Telecom~~ Facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed ~~Telecom~~ Facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

D. City Lien on Property. Until the cost of removal, repair, restoration, and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the Telecom Facility was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City Lien being added to the other costs listed in this subsection.